DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–17–0006]

RIN 0563–AC60

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Nursery Crop Insurance Provisions. The intended effect of this action is to clarify existing policy provisions, increase risk management choices allowed by the policy provisions, and expand availability to more producers. The changes will be effective for the 2019 and succeeding crop years.

DATES: This final rule is effective January 31, 2018. However, FCIC will accept written comments on this final rule until close of business April 2, 2018. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers interested persons submit their comments electronically through the Federal eRulemaking Portal. Interested persons may submit comments, identified by Docket ID No. FCIC–17–0006, by any of the following methods:

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

FCIC will post all comments received, including those received by mail, without change to *http://www.regulations.gov,* including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Background

FCIC amends the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.162 Nursery Crop Insurance Provisions to be effective for the 2019 and succeeding crop years.

The changes to 7 CFR 457.162 Nursery Crop Insurance Provisions are as follows:

1. FCIC is removing the paragraph immediately preceding section 1, which refers to the order of priority if a conflict exists among the policy provisions. This same provision is contained in the Basic Provisions. Therefore, the appearance here is duplicative and should be removed from the Nursery Crop Insurance Provisions (Crop Provisions).

2. Section 1—FCIC is deleting the definition of ''Act.'' The definition of ''Act'' is contained in the Basic Provisions. Therefore, it is duplicative and should be removed from the Crop Provisions.

FCIC is revising the definition of ''amount of insurance'' to incorporate language that is currently contained in section 3(e) that reduces the amount of insurance if any claims have previously been paid for the crop year. The language is more appropriately placed in the definition.

FCIC is revising the definition of ''basic unit value.'' The term is used repeatedly throughout the Crop Provisions, usually with a phrase such as ''including any revision'' or ''including the Peak Inventory Endorsement if elected.'' To simplify the provisions, this information is incorporated into the definition of ''basic unit value.''

FCIC is adding a definition of ''catalog,'' which is contained in the Special Provisions. In addition, the phrases ''wholesale nursery catalog or price list,'' ''nursery catalog or price list,'' and ''catalog or price list,'' are used interchangeably throughout the Crop Provisions. To simplify the provisions, the term ''catalog'' now replaces these phrases throughout.

FCIC is revising the definition of ''container grown'' to improve readability and to clarify that ''container grown'' is a nursery practice. FCIC is also revising the definition to change the term ''pot'' to ''standard nursery container.'' The term ''pot'' is the name of a specific standard nursery container size and the term must change to ''standard nursery container'' in this definition so that all standard nursery containers are included in this definition.

FCIC is adding a definition of ''Crop Inventory Valuation Report (CIVR)'' as a result of the inclusion of this term in newly-designated paragraph (c)(ii) in section 6.

FCIC is revising the definition of ''crop year deductible'' to simplify it. The definition uses the phrase ''sum of all plant inventory values for each basic unit,'' which means the same thing as ''basic unit value.'' Therefore, the phrase is replaced with the phrase ''basic unit value'' to make it easier to read and understand. The definition also states any loss under the Rehabilitation Endorsement is not considered a loss. This phrase is not needed with the revised definition of ''crop year deductible'' since payments under the Rehabilitation Endorsement do not affect the deductible.

FCIC is deleting the definition of ''deductible percentage.'' The term ''deductible'' is defined in the Basic Provisions. Therefore, having the definition in the Crop Provisions is duplicative and unnecessary.

FCIC is deleting the definitions of ''Eligible Plant List'' and ''Plant Price Schedule'' and replacing them with the definition of ''Eligible Plant List and Plant Price Schedule (EPLPPS).'' The definitions of ''Eligible Plant List'' and the definition of ''Plant Price Schedule'' refer to the same document. Combining the two definitions will prevent confusion and eliminate redundancy. Language is also added to the new definition to clarify the EPLPPS is a part of the actuarial documents. FCIC is also replacing the term ''Eligible Plant List'' with ''EPLPPS'' where it appears throughout the provisions.

FCIC is revising the definition of ''fabric grow bag'' to clarify fabric grow bags may be used for growing any type of field grown nursery plant, rather than restricting it to woody plants only. It is a common growing practice for fabric grow bags to be used for growing plants other than woody plants.

FCIC is deleting the definition of ''FCIC.'' Its meaning is provided in the preamble to the Basic Provisions. Therefore, having the definition in the Crop Provisions is unnecessary.

FCIC is revising the definition of ''field grown'' to clarify that field grown is a nursery practice. FCIC is also removing the phrase ''without the use of an artificial root containment device'' because the definition goes on to specify plants grown in in-ground fabric grow bags, plants balled and burlapped, or plants in containers that allow the plants to root into the ground are considered field grown. Plants grown in in-ground fabric grow bags, plants balled and burlapped, and plants in containers are all grown using artificial root containment devices. Therefore, the phrase is being removed to prevent confusion and redundancy.

FCIC is replacing the term ''field market value A'' and ''field market value B'' with ''field market value A (FMVA)'' and ''field market value B (FMVB),'' respectively. FCIC is also revising the definitions of those terms to be concise and easy to read.

FCIC is revising the definition of ''good nursery practices.'' The definition currently states, ''In lieu of the definition of good farming practices in section 1 of the Basic Provisions. . .'' The definition of good farming practices contained in the Basic Provisions allows published information to be considered when making good farming practice determinations. The phrase ''In lieu of'' replaces the definition contained in the Basic Provisions when in fact the definitions should be read together because published information regarding good farming practices applies to nursery producers. Therefore, ''in lieu of'' is changed to ''in addition to'' to make it clear that published information can be considered when making good farming practice determinations for nursery producers.

FCIC is revising the definition of ''liners'' to incorporate language currently contained in the Special Provisions that specifies the acceptable, insurable dimensions of liners.

FCIC is revising the definition of ''loss.'' The term is used in the Crop Provisions and is usually preceded with the phrase ''as adjusted by any previous under-report factor.'' A Special Provisions statement uses the term ''loss'' preceded by the phrase ''as adjusted by any previous under-report factor or over-report factor.'' That Special Provisions statement, along with other Special Provisions statements related to the over-report factor, is incorporated into the Crop Provisions. The definition of ''loss'' is revised to include the phrase ''as adjusted by any previous under-report factor or over-report factor'' in order to eliminate the need to repeat that phrase throughout the Crop Provisions.

FCIC is adding the definition of ''lowest price,'' which is currently contained in the Special Provisions. The phrase ''the price for each plant and size listed on your [Plant Inventory Value Report (PIVR)] will be the lower of the [EPLPPS] price or the lowest wholesale price in your nursery catalog or price list'' is used repeatedly throughout the Crop Provisions. To simplify the provisions, the Crop Provisions will substitute this phrase with the term ''lowest price.''

FCIC is revising the definition of ''marketable'' to provide clarity. The definition uses the word ''it'' but does not clarify what ''it'' means. The definition also uses the term ''market'' but does not indicate if the term refers to usual or customary market channels employed by the nursery operation or a secondary market where lesser values prevail. Therefore, the definition is being revised to clarify ''a plant that can be sold in a customary or secondary market for a non-zero value.''

FCIC is revising the definition of ''nursery'' to change the percentage from 50 percent to 40 percent. FCIC has received comments that the 50 percent requirement is arbitrary and that FCIC may be omitting market share by imposing that restriction. Since the nature of prices is such that retail prices are higher than wholesale prices, the retail share of total sales is weighted more heavily. In addition, the industry has evolved since this limit was implemented with more nurseries engaging in both wholesale and retail sales. By lowering the requirement from 50 to 40 percent of sales, FCIC is allowing more nurseries to be eligible for insurance while still recognizing the intent of the program is to provide coverage to nurseries with a large share of their production dedicated to wholesale sales. FCIC is also revising the definition to clarify what ''gross income'' means. The current definition states a nursery is ''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.'' The revised language clarifies ''gross income'' by adding the phrase ''derived from plant sales'' to clarify only income from plant sales, is included when determining if the nursery qualifies for insurance under this definition. Income from sales of other products is not included. For example, assume the nursery derives 60 percent of its income from landscape sales, 25 percent from wholesale plant sales, and 15 percent from retail plant sales. This nursery would be eligible for insurance according to the revised definition because 62.5 percent (25 percent wholesale plant sales/(25 percent wholesale plant sales + 15 retail plant sales) = 25/40 = 62.5 percent wholesale plant sales) of the gross income derived from plant sales is from the wholesale marketing of plants.

FCIC is revising the definition of ''occurrence deductible'' to incorporate the revised definition of ''occurrence deductible'' contained in the Special Provisions. The revised ''occurrence deductible'' definition addresses the over-report factor and its application in the calculation of the occurrence deductible.

FCIC is adding the definition of ''over-report factor,'' which has been in the Special Provisions since 2011. The ''over-report factor'' ensures indemnities are not overpaid when the reported basic unit values reported on the PIVR are greater than the inventory value immediately preceding the loss (FMVA). The current provisions already include an under-report factor to address situations where the reported basic unit values are less than FMVA. The over-report factor addresses the contrasting situation.

FCIC is revising the definition of ''practice'' to specify the insurable practices are listed in the actuarial documents to be consistent with other Crop Provisions. Although this change would allow practices to be added or removed through the actuarial documents, FCIC currently does not intend on adding any new practices or removing any existing practices.

FCIC is adding a definition of ''restock.'' Restock is not a defined term, but is used several times in the Crop Provisions. It is defined in the Peak Inventory Endorsement. Since the term is used in both documents, the definition should be moved to the Crop Provisions.

FCIC is revising the definition of ''sales closing date'' to add the phrase ''of these Crop Provisions'' at the end.

FCIC is revising the definition of ''standard nursery containers.'' A variation of this definition is contained in the Special Provisions, and is incorporated into the Crop Provisions. The definition specifies the minimum insurable dimension for ''standard nursery containers.''

FCIC is revising the definition of ''survival factor'' to improve readability.

FCIC is revising the definition of ''under-report factor'' to remove the phrase ''as adjusted by any previous under-report factor,'' since this phrase is to be included in the definition of ''loss'' and is not necessary in this definition. FCIC is also removing the last sentence which refers to Rehabilitation Endorsement payments. The sentence is not necessary in the definition of ''under-report factor.''

3. Section 2—FCIC is revising paragraph (a) by subdividing the paragraph into two subparagraphs and adding provisions to allow basic units by non-contiguous land for the field grown practice only. Policyholders will be required to keep records separate for each unit if they elect basic units by non-contiguous land. This change gives the policyholders who insure their field grown practice the choice of selecting basic units either by plant type or by non-contiguous land. Policyholders may have several nursery locations throughout a county. FCIC has received requests to allow policyholders to insure each location as a separate unit because different locations have inherently different risks. Therefore, under the current policy language, one location may suffer damage while other locations may not. In the event of a loss, all locations within the unit must be assessed for damage, creating extra burden on the policyholder and insurance provider. Further, the loss in one location may be offset by production in other locations, making it difficult for policyholders to be compensated for the damage suffered at a single location. Allowing separate basic units by non-contiguous land for the field grown practice will decrease the burden on policyholders and insurance providers while also allowing policyholders greater flexibility to make appropriate risk management decisions for their nursery locations throughout a county. Basic units by non-contiguous land will not be available to the container grown practice, unless allowed by Special Provisions, in order to prevent fraud, waste and abuse. Containers are highly portable and may be moved from one location to another based on the operations' needs. With or without intentions or motives, container grown operations could increase the chances of an indemnity when they move inventory from one location (basic unit) to another.

FCIC is revising redesignated paragraph (a)(1) to remove the phrase ''designated in section 2(b).'' This phrase refers to the list of insurable plant types that are currently listed in paragraph (b). However, FCIC is removing the list of insurable plant types from paragraph (b), so this phrase is no longer applicable.

FCIC is revising paragraph (b) to remove the list of insurable plant types. Insurable types for other crops are listed in the actuarial documents. For nursery, the insurable plant types are listed in the Crop Provisions and in the actuarial documents. It is not necessary to list them in both documents so FCIC is removing the list from the Crop Provisions.

4. Section 3—FCIC is revising paragraph (a) to remove the reference to the misreporting provisions in the Basic Provisions. The misreporting provisions have been removed from the Basic Provisions so the reference in the Crop Provisions is no longer valid.

FCIC is revising paragraph (c)(1)(iv)(A) by removing the reference to the Peak Inventory Endorsement and replacing it with the Peak Inventory Value Report since the policyholder submits a Peak Inventory Value Report rather than a Peak Inventory Endorsement.

FCIC is revising paragraph (c)(1)(iv)(B) by clarifying that a coverage level must be selected if the new plant is not categorized under a plant type reported on the initial PIVR or Peak Inventory Value Report, if applicable. Previously the provision did not reference the Peak Inventory Value Report. The provisions in paragraph (c)(1)(iv)(A) refer to the Peak Inventory Value Report, so the addition of the Peak Inventory Value Report in paragraph (c)(1)(iv)(B) makes the provisions in the two paragraphs consistent.

FCIC is also revising paragraph (d) to remove the references to the 2006 crop year. The references are no longer needed. By removing the references to the 2006 crop year, paragraph (d)(2)(i) is removed. As a result, paragraphs (d)(2)(ii) and (iii) are redesignated as paragraphs (d)(2)(i) and(ii), respectively.

FCIC is removing the provisions in paragraph (e). These provisions are now included in the revised definition of ''amount of insurance,'' and therefore, are no longer necessary. FCIC is redesignating paragraph (f) as (e).

5. Section 6—FCIC is revising paragraph (b) to clarify that a separate PIVR must be submitted for each insured practice. The word ''separate'' is added to provide clarification. FCIC is also revising paragraph (b) to state a separate PIVR is required for each non-contiguous land unit within each insured practice if the policyholder selects basic units by non-contiguous land.

FCIC is revising paragraph (b)(1) to include a provision that addresses the date by when policyholders will be notified if their applications are rejected because the required documents are unacceptable. The current provisions only state the policyholders will be notified, but are silent on when they will be notified.

FCIC is revising paragraph (b)(2) to clarify insurance attaches on the 31st day after all required documents are received. The current provisions state insurance attaches 30 days after the documents are received. The Nursery Underwriting Guide clarifies what is meant by 30 days: The 30-day waiting period does not include the date the required documentation is submitted or the date insurance attaches but the provision is more appropriate in the Crop Provisions. Now the provisions are clear that insurance would not attach until 30 full days have elapsed after the documents were received. FCIC is including the same clarification in the Crop Provisions.

FCIC is revising paragraph (c)(1) to include basic units by non-contiguous land to be consistent with the other changes to the policy allowing such units.

FCIC is revising paragraph (c)(2) to divide the paragraph into subparagraphs to make the paragraph easier to read. Newly-designated paragraph (c)(2)(i) is revised by adding the phrase ''or a CIVR.'' The current provisions state the policyholder may be required to provide a detailed plant inventory listing that includes the name, the number, and the size of each plant. Adding the phrase mentioned above gives the insurance provider an option of requesting a detailed plant inventory listing or the CIVR, which is a plant inventory list created using the Nursery Inventory Software. FCIC is also moving the last sentence of paragraph (c)(2) to newly designated paragraph (c)(2)(ii) because it is more appropriately placed there than at the end of newly-designated paragraph (c)(2)(iii).

Newly-designated paragraph (c)(2)(iii) contains the provisions currently in paragraph (c)(2) regarding the policyholders' ability to obtain and maintain nursery stock. FCIC is revising newly-designated paragraph (c)(2)(iii) to replace the term ''nursery stock'' with the term ''nursery plants.'' The term ''stock plants'' is a defined term, excluded from insurance in section 8. The term ''nursery plants'' is more appropriate as this section refers to insurable plants.

FCIC is revising paragraph (c)(3) to improve readability and adding new paragraphs (c)(3)(ii) and (c)(4) to incorporate provisions currently contained in the Special Provisions. These provisions refer to the consequences for failing to provide adequate documentation depending on whether the documentation is requested before or after insurance attaches.

FCIC is moving paragraph (f) to a newly-designated paragraph (c)(5). Paragraph (c) contains PIVR reporting requirements for policyholders. The current paragraph (f) contains PIVR reporting requirements for policyholders who elect catastrophic risk protection coverage. Since both paragraphs contain PIVR reporting requirements, moving paragraph (f) into paragraph (c) will add clarity by aligning related content. The information contained in paragraph (f) is more appropriate under paragraph (c), which contains reporting requirements for all policyholders. FCIC is also omitting some of the provisions from paragraph (f) because the provisions are identical to the provisions contained in paragraph (c)(3), which applies to catastrophic risk protection coverage and additional coverage. This reduces redundancy and improves readability.

FCIC is revising paragraph (d) to include the phrase ''if applicable'' following the phrase ''Peak Inventory Value Report.'' This change is being made because the provision is only applicable to a Peak Inventory Value Report if the Peak Endorsement is elected.

FCIC is revising the introductory text in paragraph (e) to replace the phrase ''inventory value by basic unit'' with the phrase ''basic unit value.'' The two phrases are synonymous, but ''basic unit value'' is defined in section 1 so the phrase ''basic unit value'' is more appropriate.

FCIC is revising paragraph (e)(1). The provisions require the price for each plant and size listed on the PIVR must meet certain criteria. However, the price for each plant and size is not listed on the PIVR; instead, the basic unit value is listed on the PIVR. Therefore, the provisions are revised to state the basic unit value listed on the PIVR must meet certain criteria. FCIC is also revising paragraph (e)(1) to clarify that the inventory value for liners must also be multiplied by the survival factor.

FCIC replaced the reference to the Plant Price Schedule with the reference to the EPLPPS in paragraph (e)(2).

With the removal of paragraph (f), as mentioned above, paragraphs (g) through (k) have been redesignated as (f) through (j).

FCIC is revising redesignated paragraph (f)(1) to state a revised PIVR must meet the same requirements as the original PIVR. Currently, redesignated paragraph (f)(1) limits the requirements for a revised PIVR to those requirements for a PIVR listed in paragraph (c). However, the requirements for a PIVR listed in paragraph (e) also apply to a revised PIVR.

FCIC is revising redesignated paragraph (f)(2) to state why an inspection will be conducted when a revised PIVR is submitted. Currently, the provisions only state that an inspection will be performed. The revised provisions state an inspection will be performed to determine if adequate and acceptable facilities exist to accommodate the requested increased inventory value.

FCIC is revising redesignated paragraph (f)(2) to state an inspection will be performed if a Peak Inventory Endorsement is purchased and the inventory reported on the Peak Inventory Value Report is increased 50 percent or more from the previous total of all basic unit values. Currently, an inspection will be performed whenever the total of all basic unit values included on the PIVR increases by 50 percent or more due to a revised PIVR. However, the policyholder can purchase a Peak Inventory Endorsement to increase the amount of insurance by 200 percent with no mandatory inspection requirement. Adding language regarding Peak Inventory Endorsements to this section aligns the inspection requirements for revised PIVRs and Peak Inventory Value Reports.

FCIC is revising redesignated paragraph (f)(3). The current provisions state the insurance provider has the discretion to perform an inspection when the total of all basic unit values on a revised PIVR is increased less than 50 percent. This paragraph is revised to include language regarding Peak Inventory Endorsements. This revision aligns the inspection requirements for revised PIVRs and Peak Inventory Value Reports. The provisions are also revised to make the wording in this paragraph and in redesignated paragraph (f)(2) consistent.

FCIC is revising redesignated paragraph (f)(5). Current provisions state any increase in reported basic unit values will be rejected if a loss occurs before the increased value takes effect. The provisions are revised to include the following parenthetical: ''(rejection can occur at any time we discover such loss occurred)'' because in some cases the loss will not be discovered until after the increased value takes effect and this will clarify that the increase can be rejected at any time it is determined that a loss occurred before the increased value took effect. This language is consistent with language in section 3 regarding rejecting any request for changes in coverage level if a loss occurs prior to the date insurance is scheduled to attach for the new coverage level.

FCIC is adding a new paragraph (f)(7). Provisions in redesignated section 3(e) state the amount of insurance may be increased in accordance with redesignated section 6(f) if the nursery is restocked. Redesignated section 6(f) contains provisions that allow the inventory value, which is a key component of the amount of insurance, to be increased twice during the crop year by submitting a revised PIVR, but is not clear if increasing the amount of insurance due to restocking the nursery is counted as one of the two allowable revisions. New paragraph (f)(7) clarifies if the policyholder suffers an insured loss on a basic unit and restocks the nursery, then the policyholder is allowed to increase the reported inventory value for the basic unit one additional time.

FCIC is revising redesignated paragraph (g)(2). The provisions state damaged plants will be removed from the PIVR if they are not accepted. However, plants are not listed on the PIVR, instead the insurable value of plants in each basic unit is listed on the PIVR. Therefore, FCIC is revising the provisions to state the insurable value of the damaged plants will be removed from the basic unit value reported on the PIVR.

FCIC is revising redesignated paragraph (i) by removing *http://www.rma.usda.gov/* and replacing it with the phrase ''RMA's website.'' The hyperlink to RMA's website is provided in the Basic Provisions so it is not necessary to include it in the Crop Provisions. This is consistent with same reference in the definition of ''Eligible Plant List and Plant Price Schedule (EPLPPS)'' in the Crop Provisions.

FCIC is revising redesignated paragraph (i)(4) to include the phrase ''(except printed discount schedules)'' to be consistent with the new definition of ''catalog'' in section 1.

FCIC is revising redesignated paragraph (i)(5) by replacing the term ''scientific'' with ''botanical.'' While both terms are correct, ''botanical'' is more appropriate because its meaning infers a name that is assigned to plants.

6. Section 7—FCIC is revising paragraph (a) to include provisions specifying that the premium is multiplied by .55 when the catastrophic risk protection coverage is elected. Currently, the provisions only address how premium is calculated for additional coverage. This provision is added to prevent confusion.

FCIC is revising paragraph (c). This paragraph states premium will be charged for the entire month ''if your premium is prorated.'' This clause is not necessary since the remainder of this provision adequately describes the calculation of premium for a partial month.

FCIC is revising paragraphs (d)(1) and (2) to replace the date of ''April 1'' with the phrase ''the premium billing date listed in the actuarial documents.'' Because the premium billing date is listed in the actuarial documents, it is not necessary to list it in the Crop Provisions. FCIC is also revising paragraph (d)(2) by adding the phrase ''or submission of your PIVR or catalog'' to the end of the paragraph to maintain consistency between the beginning of the paragraph and the end of the paragraph.

7. Section 8—FCIC is revising the introductory text to clarify the insured crop will be all insurable nursery plants and plant types within each insured practice. FCIC is also removing the phrase, ''contained on the Eligible Price List, in which you have a share.'' Although Eligible Price List should be Eligible Plant List, the term is not needed since paragraph (a) contains the requirement that plants be shown on the Eligible Plant List. The phrase, ''in which you have a share,'' is revised and moved to a new paragraph (a) to be consistent with the format of other Crop Provisions. Paragraphs (a) through (j) are redesignated as paragraphs (b) through (k).

FCIC is revising redesignated paragraph (i) to state plants grown to be sold with the root system removed are not insurable. The current provision states plants grown for sale as Christmas trees are not insurable. The intent of this provision is to exclude plants severed from their root systems and then sold. There are plants listed on the EPLPPS grown for sale as Christmas trees with the root system attached. One example is the Norfolk Island Pine, which is grown and sold in a container with the root system attached. Currently, those plants are not insurable because they are ''grown for sale as Christmas trees.'' Therefore, the provision is reworded to clarify all plants that are grown and sold with the root system attached are insurable.

8. Section 9—FCIC is removing all references to the 2006 crop year. The references are no longer needed. Paragraph (a)(1)(i) has been deleted as a result. Paragraphs (a)(1)(ii) and (iii) have been redesignated as paragraphs (a)(1)(i) and (ii), respectively.

FCIC is revising redesignated paragraph (a)(1)(i) by stating the insurance provider will notify the policyholder in writing if the application is rejected because the PIVR or catalog is not acceptable. The current provisions only state the insurance provider will notify the policyholder in writing if the inventory is not acceptable. Section 6(b)(1) states policyholders will be notified in writing before the end of the 30-day waiting period because the inspection determines the policyholders do not meet the insurability requirements or the PIVR, catalog, or supporting documentation (if requested by us) is not acceptable. Similar language to this already exists in redesignated paragraph (a)(1)(i) but that language is revised to be consistent with the wording of the language in section 6(b)(1). Consistency between the two sections reduces confusion.

FCIC is also revising redesignated paragraph (a)(1)(i). This paragraph states coverage begins on June 1 if the policyholder applies for coverage on or before May 1. Following this provision is a phrase that says, ''30 days after your crop insurance agent receives an application signed by you.'' The phrase reiterates that coverage attaches on June 1, which is 30 days after May 1, and is not needed.

FCIC is revising redesignated paragraph (a)(1)(ii). This paragraph currently states coverage will not begin until the next crop year if the policyholder applies for coverage after May 1. To minimize confusion, FCIC is revising this paragraph to state coverage will not begin until the 31st day, which occurs on or after the beginning of the next crop year, after all such documents have been received.

FCIC is adding a new paragraph (b)(5) to state insurance ends when the crop has been abandoned. Section 11 of the Basic Provisions currently contains information regarding abandonment of the crop but section 9 of the Crop Provisions states that section 11 of the Basic Provisions does not apply. Therefore, information regarding abandonment of the crop is included in the Crop Provisions.

9. Section 10—FCIC is revising paragraph (c)(3) to incorporate the lead-in sentence from paragraph (c)(3)(i). The lead-in sentence says, ''you have installed adequate cold protection equipment or facilities.'' This lead-in sentence is not contained in paragraph (c)(3)(ii), but should be. Therefore, for consistency and simplification, the lead-in sentence from paragraph (c)(3)(i) is added to paragraph (c)(3), and removed from paragraph (c)(3)(i), so that it applies to both subparagraphs.

FCIC is revising paragraph (c)(3)(ii) by adding the phrase ''or facilities'' after the phrase ''required cold protection equipment.'' This change is made to be consistent with the language in paragraph (c)(3).

FCIC is revising paragraph (c)(6) to be consistent with the change to the definition of ''good nursery practices.'' The phrase ''In lieu of section 12(b) of the Basic Provisions'' in paragraph (c)(6) is removed because good nursery practices as defined in the Crop Provisions will be in addition to good farming practices as defined in the Basic Provisions.

10. Section 11—FCIC is revising paragraph (b). Current provisions state, ''Failure to obtain our written consent as required by section 11(a)(1) will result in the denial of your claim.'' The provisions do not clearly state on what portion of the policy the claim will be denied. The revised provision clarifies the intent of the provisions, which is to deny the claim on an individual basic unit basis. The provisions are also revised so that they are written in plain language.

11. Section 12—FCIC is incorporating provisions throughout section 12 currently contained in the Special Provisions regarding the over-report factor, including revising paragraph (a), revising paragraph (d), and adding a new paragraph (h).

FCIC is revising paragraph (f)(1) to change the lead-in clause from ''For other than catastrophic risk protection coverage'' to ''For additional coverage.'' This change improves readability and provides consistency with the terminology used throughout the Crop Provisions.

FCIC is adding a new paragraph (i) to address record-keeping for policyholders who elect basic units by non-contiguous land. In section 2(a), FCIC added provisions to allow for basic units by non-contiguous land, which included the requirement for policyholders to keep records separate by unit. If policyholders elect basic units by non-contiguous land, and a loss occurs on only one unit, then policyholders need to have records applicable to that unit in order for the insurance company to properly work the loss.

12. Section 14—FCIC is adding a new paragraph (a) and redesignating paragraphs (a) through (c) as (b) through (d), respectively. The newly added paragraph (a) is added to clarify that written agreements are only allowed for plants not listed on the EPLPPS.

FCIC is revising newly designated paragraphs (b) and (d) by changing the term ''cancellation date'' to ''sales closing date.'' Current provisions state written agreements must be requested with the application for the initial crop year or no later than the cancellation date for subsequent crop years. The provisions are changed so that the deadline is the sales closing date, rather than the cancellation date. If, according to the current provisions, a policyholder submits a request prior to the cancellation date (for example, May 15th), the policyholder would have a lapse in coverage from June 1st (the start date of the crop year) until June 15th because of the 30-day waiting period. By changing the deadline to the sales closing date (May 1st), the policyholder does not risk having a lapse in coverage because coverage will automatically attach on June 1st, if the written agreement is approved. Also in redesignated paragraph (b), FCIC revised the reference ''section 14(c)'' to state ''section 14(d)'' in order to accommodate the redesignation of paragraph (c) as (d).

13. Section 15—FCIC is revising the Single Unit Example and the Peak Inventory Endorsement Example to improve readability. FCIC is also adding a Single Unit Example regarding the over-report factor, which is currently contained in the Special Provisions.

Effective Date

This regulation modifies program eligibility criteria along with several elements of the Nursery Crop Provisions. The intended effect of this action is to clarify and simplify policy provisions, allow basic units by non-contiguous land for the field grown practice, and reduce the 50 percent wholesale sales requirement to 40 percent. This regulation is related to a crop insurance policy, which is a contract between an approved insurance provider and the insured. In order to make the rule effective for the upcoming crop year, RMA is publishing it as a final rule. To accomplish this, RMA is employing the contracts exemption at 5 U.S.C. 553(a)(2), which grants agencies the opportunity publish rules related contracts without the prior notice and public comment period typically required in rulemaking. If RMA elected not to use the contracts exemption, farmers would be denied the added flexibility this rule provides to the crop insurance program for a full crop year. Moreover, while RMA is using the contracts exemption to make the changes effective for the upcoming crop year, the agency remains committed to public participation in rulemaking and will accept written comments on this final rule. RMA will consider all comments that are received and may conduct additional rulemaking based on the comments.

Executive Orders 12866, 13563, and 13771

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

Paperwork Reduction Act of 1995

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

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for 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 (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of 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 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

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

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 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) and 1506(o).

■ 2. Amend § 457.162 as follows:
■ a. In the introductory text by removing ''2006'' and adding ''2019'' in its place;
■ b. By removing the undesignated paragraph immediately preceding section 1;
■ c. In section 1:
■ i. By removing the definitions of ''Act'';
■ ii. By revising the definitions of ''Amount of insurance'' and ''Basic unit value'';
■ iii. By adding in alphabetical order the definition of ''Catalog'';
■ iv. By revising the definition of ''Container grown'';
■ v. By adding in alphabetical order the definition of ''Crop Inventory Valuation Report'';
■ vi. By revising the definition of ''Crop year deductible'';
■ vii. By removing the definitions of ''Deductible percentage'' and ''Eligible Plant List'';
■ viii. By adding in alphabetical order the definition of ''Eligible Plant List and Plant Price Schedule (EPLPPS)'';
■ ix. In the definition of ''Fabric grow bag'' by removing the word ''woody'';
■ x. By removing the definition of ''FCIC'';
■ xi. By revising the definition of ''Field grown'';
■ xii. By removing the definitions of ''Field market value A'' and ''Field market value B'';
■ xiii. By adding in alphabetical order the definitions of ''Field market value A (FMVA),'' ''Field market value B (FMVB)'';
■ xiv. In the definition of ''Good nursery practices'' by removing the phrase ''lieu of'' and adding the phrase ''addition to'' in its place;
■ xv. In the definition of ''Irrigated practice'' by removing the phrase ''Eligible Plant List'' and adding ''EPLPPS'' in its place;
■ xvi. By revising the definitions of ''Liners'' and ''Loss'';
■ xvii. By adding in alphabetical order the definition of ''Lowest price'';
■ xviii. By revising the definitions of ''Marketable'', ''Nursery'', and ''Occurrence deductible'';
■ xix. By adding in alphabetical order the definition of ''Over-report factor'';
■ xx. By removing the definition of ''Plant Price Schedule'';
■ xxi. By revising the definition of ''Practice'';
■ xxii. By adding in alphabetical order the definition of ''Restock'';
■ xxiii. In the definition of ''Sales closing date'' by adding the phrase ''of these Crop Provisions'' immediately after the phrase ''sections 3(d) and 9(a)'';
■ xxiv. By revising the definitions of ''Standard nursery containers,'' ''Survival factor,'' and ''Under-report factor'';
■ d. Revise section 2;
■ e. In section 3:
■ i. In paragraph (a) by removing the phrase '', including the misreporting provisions,'';
■ ii. By revising paragraphs (c)(1)(iv)(A) and (B) and (d)(2);
■ iii. By removing paragraph (e) and redesignating paragraph (f) as (e); and
■ iv. In newly redesignated paragraph (e) by removing the phrase ''section 6(g)'' and adding ''section 6(f)'' in its place;
■ f. In section 6:
■ i. By revising paragraphs (b) and (c);
■ ii. In paragraph (d) by adding the phrase '', if applicable,'' immediately following the phrase ''Peak Inventory Value Report'';
■ iii. By revising paragraphs (e) introductory text and (e)(1) and (2);
■ iv. By removing paragraph (f) and redesignating paragraphs (g) through (k) as (f) through (j), respectively;
■ v. By revising newly redesignated paragraphs (f) and (g)(2) and (3);
■ vi. In newly redesignated paragraph (i) by removing the phrase ''Eligible Plant List at *http://www.rma.usda.gov/*'' and adding ''EPLPPS on RMA's website'' in its place; and
■ vii. By revising newly redesignated paragraphs (j) introductory text and (j)(4) and (5);
■ g. In section 7:
■ i. By revising paragraph (a);
■ ii. In paragraph (b)(1)(ii) by removing the phrase ''wholesale catalog or price list'' and adding the word ''catalog'' in its place;
■ iii. In paragraph (c) by removing the phrase ''If your premium is prorated, premium'' and adding the word ''Premium'' in its place; and
■ iv. By revising paragraph (d);
■ h. In section 8:
■ i. By revising the introductory text;
■ ii. By redesignating paragraphs (a) through (k) as (b) through (l), respectively, and adding a new paragraph (a);
■ iii. In newly redesignated paragraph (b) by removing the phrase ''Eligible

Plant List'' in the two places it appears and adding ''EPLPPS'' in its place;
■ iv. In newly redesignated paragraph (f) by removing the word ''You'' and adding the word ''you'' in its place;
■ v. By revising newly redesignated paragraph (i); and
■ vi. In newly redesignated paragraph (k) by removing the word ''Harvest'' and adding the word ''harvest'' in its place;
■ i. Revise section 9;
■ j. In section 10:
■ i. By revising paragraph (c)(3); and
■ ii. In paragraph (c)(6) by removing the phrase ''In lieu of section 12(b) of the Basic Provisions, failure'' and adding the word ''Failure'' in its place;
■ k. In section 11 by revising paragraph (b);
■ l. Revise section 12;
■ m. In section 14:
■ i. By redesignating paragraphs (a) through (c) as (b) through (d), respectively, and adding a new paragraph (a);
■ ii. In newly redesignated paragraph (b) by removing the word ''cancellation'' and adding the words ''sales closing'' in its place and removing the phrase ''section 14(c)'' adding the phrase ''section 14(d)'' in its place; and
■ iii. In newly redesignated paragraph (d) introductory text by removing the word ''cancellation'' and adding the words ''sales closing'' in its place; and
■ n. Revise section 15.

The revisions and additions reads as follows:

§ 457.162 Nursery crop insurance provisions.

* * * * *

1. Definitions

* * * * *

Amount of insurance. For the purposes of calculating premium, the result of multiplying the basic unit value by your selected coverage level and by your share. For the purpose of determining the amount of any indemnity, the result of multiplying the basic unit value by your selected coverage level and by your share minus any previous indemnities during the crop year paid under these Crop Provisions.

Basic unit value. The full inventory value of all insurable plants in a basic unit declared on your original or revised PIVR and a Peak Inventory Value Report, if applicable.

Catalog. Any document, including but not limited to printed discount schedules, issued by your nursery and used to advise actual and/or potential buyers of the amount you are charging for purchases of each plant included in the inventory.

(1) Such documents may be issued by season, by plant type, or other basis consistent with your business practices.

(2) The documents can be in any form, but must meet the minimum standards contained in section 6(j), except that the printed discount schedules do not have to be provided to customers.

Container grown. A nursery production practice in which plants are grown in standard nursery containers: above the ground; placed in the ground; or when placed in another standard nursery container in the ground (*i.e.,* pot-in-pot).

Crop Inventory Valuation Report (CIVR). A plant inventory list created on the Nursery Inventory Software for assisting in establishing the insurable nursery plant inventory value.

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Crop year deductible. The basic unit value multiplied by the deductible minus the amount of any previously-incurred deductible if you have reported each loss to us in accordance with section 11(a)(2). 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.

Eligible Plant List and Plant Price Schedule (EPLPPS). A component of the actuarial documents that is published by FCIC on RMA's website and is also available on compact disk from your crop insurance agent. The EPLPPS contains the following information:

(1) The botanical and common names of insurable plants;

(2) The cold protection requirements for container grown material and the areas in which they apply;

(3) The hardiness zone in which field grown material is insurable;

(4) The designated hardiness zones available for each county;

(5) The plant type, storage key, and hardiness zone classification for each plant on the list; and

(6) A schedule of insurable plant prices that establishes the highest value accepted for insurance purposes unless otherwise allowed by the policy or an endorsement to the policy.

* * * * *

Field grown. A nursery production practice in which plants are grown in the ground. 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 (FMVA). Our determination of the value of all insurable plants in the basic unit immediately prior to the occurrence of a loss event. This value will be determined in accordance with the requirements of section 6 of these Crop Provisions. 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 (FMVB). Our determination of the value of all damaged and undamaged insurable plants in the basic unit following the occurrence of a loss event. This value will be determined in accordance with the requirements of section 6 of these Crop Provisions with an adjustment for the amount of damage we determine the plants have sustained.

* * * * *

Liners. Plants produced in standard nursery containers that have a minimum dimension greater than or equal to ⅝ inch and a maximum dimension of less than 3 inches at the widest point of the container or cell interior, have an established root system, and meet all other conditions specified in the Special Provisions.

Loss. FMVA minus FMVB, as adjusted by any under-report factor or over-report factor. Payments made under the Rehabilitation Endorsement are not considered to be a loss.

Lowest price. The lesser of the minimum price stated in your catalog or the price contained in the EPLPPS for a plant and its size. The minimum price in your catalog is the lowest price at which you will sell that plant and size to any buyer, including all incremental volume discounts or any other discounting factor.

Marketable. A plant that can be sold in a customary or secondary market for a non-zero value.

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Nursery. A business enterprise that grows the nursery plants. At least 40 percent of its gross income derived from plant sales must be from the wholesale marketing of such plants.

Occurrence deductible. This deductible allows a smaller deductible than the crop year deductible to be used when FMVA is more or less than the reported basic unit value. The occurrence deductible is the lesser of:

(1) The deductible multiplied by FMVA and:

(i) In under-report situations, multiplied by the under-report factor; or

(ii) In over-report situations, multiplied by the sum of 1.000 plus the over-report factor; or

(2) The crop year deductible.

Over-report factor. The factor that adjusts your indemnity for overreporting of inventory values. This factor is used to determine indemnities when the basic unit value minus the total of all previous losses is more than 110 percent of FMVA for the same basic unit plus the insured value of plants listed on the verifiable sales records. The over-report factor is calculated by:

(1) The basic unit value reported on the PIVR, including any Peak Inventory Value Report during the coverage term of a Peak Inventory Endorsement, if applicable, minus the total of all previous losses;

(2) FMVA plus the insured value of plants listed on the verifiable sales records, minus 1.100; and

(3) Dividing the result of paragraph (1) of this definition by the result of paragraph (2) of this definition.

(4) If the result is greater than 0.000, then the over-report factor applies.

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Practice. A cultural method of producing plants identified in the actuarial documents.

Restock. Replacement of lost or damaged plants that increases the value of the insurable inventory to an amount greater than the remaining amount of insurance.

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Standard nursery containers. Rigid containers that have a minimum dimension greater than or equal to ⅝ inch, unless otherwise provided by the Special Provisions, at the widest point of the container interior, 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.

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Survival factor. A value specified in the Special Provisions that denotes 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, if applicable, minus the total of all previous losses; and dividing that result by FMVA.

* * * * *

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:

(1) Each insurable plant type for which a premium rate is provided by the actuarial documents; or

(2) For the field grown practice only, non-contiguous land. Basic units by non-contiguous land for the container grown practice may be allowed if provided for in the Special Provisions.

(b) Only the plant types listed in the actuarial documents are insurable.

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

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) A new plant is added under a revised PIVR or Peak Inventory Value Report, if applicable; and

(B) The new plant is not categorized under a plant type reported on the initial PIVR or Peak Inventory Value Report, if applicable.

* * * * *

(d) * * *

(2) For carryover policies:

(i) Changes must be requested on or before the sales closing date; and

(ii) 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 on the date of the start of the crop year.

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6. PIVR

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(b) You must submit a separate PIVR for each insured practice, as applicable, and two copies of your most recent catalog to us with your application and on or before the sales closing date for each crop year following the year of application. If you elected basic units by non-contiguous land, you must also submit a separate PIVR for each non-contiguous land unit within the insured practice, and keep all records separate by unit.

(1) You will be notified in writing on or before the end of the 30-day waiting period if an application for insurance is rejected because the inspection determines you do not meet the insurability requirements or the PIVR, catalog, or supporting documentation (if requested by us) is not acceptable.

(2) If you fail to provide a PIVR or catalog on or before the sales closing date for any crop year, insurance will not attach until the 31st day 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 additional basic units by non-contiguous land, or if you elect catastrophic risk protection coverage, the 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 the following:

(i) A detailed plant inventory listing that includes the name, the number, and the size of each plant, or a CIVR;

(ii) Acceptable records of sales and purchases of plants for the three previous crop years in the amount of detail we require. 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; and

(iii) Your ability to properly obtain and maintain nursery plants.

(3) If you fail to provide the requested documentation:

(i) Before insurance attaches, your insurance will be denied for the crop year for any basic units for which you did not provide such documentation. This provision does not apply to:

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

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

(ii) After insurance attaches, you will still owe premium, but you will not receive an indemnity for any basic units for which you did not provide such documentation. This provision does not apply to:

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

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

(4) If you provide inadequate documentation (*i.e.,* documentation that does not support the amount for which you reported) after insurance attaches for each basic unit, your insurance will not be denied for the crop year. However, your failure to provide

adequate documentation may result in a reduction in your indemnity for each basic unit where inadequate documentation was provided.

(5) For policies insured at the catastrophic risk protection level, you must report, on the PIVR for each practice insured, your greatest plant sales in any of the previous three years and the actual inventory value on the date insurance attaches. 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 three years; or

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

* * * * *

(e) Your PIVR must reflect your insurable basic unit value.

(1) The basic unit value you report on your PIVR must be based on the lowest price for each plant size included in the inventory. The inventory value of insured liners must be multiplied by the survival factor.

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

* * * * *

(f) 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 meet all the requirements of the original PIVR.

(2) We will perform an inspection of the nursery to determine if adequate and acceptable facilities exist to accommodate the requested increased inventory value when the total of all the basic unit values contained on the revised PIVR or Peak Inventory Value Report, if applicable, 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 nursery to determine if adequate and acceptable facilities exist to accommodate the requested increased inventory value if an increase of less than 50 percent is reported on the revised PIVR or Peak Inventory Value Report, if applicable.

(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 (rejection can occur at any time we discover such loss has occurred).

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

(7) Notwithstanding section 6(f), if you have suffered an insured loss on a basic unit and have restocked the nursery, then you are allowed to increase your reported inventory value for the basic unit one additional time by submitting a revised PIVR.

(g) * * *

(2) The insurable value of such plants will be removed from the applicable basic unit value reported on 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) At a minimum, your catalog must meet the following standards:

* * * * *

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

(5) List each plant's name (botanical or common), plant or container 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, any premium adjustment factor, and the monthly proration factor contained in the actuarial documents. If you elect catastrophic risk protection coverage, this calculation must also be multiplied by fifty-five percent.

* * * * *

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

(1) If you apply for insurance before the premium billing date listed in the actuarial documents, 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 listed in the actuarial documents.

(2) If you apply for insurance, or submit your PIVR or catalog, on or after the premium billing date listed in the actuarial documents, the premium for the partial crop year will be due and must be paid at the time of application or submission of your PIVR or catalog.

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

8. Insured Crop and Plants

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the insured crop will be all nursery plants in each practice you elect to insure, and:

(a) For which you have a share;

* * * * *

(i) Are grown and sold with the root system attached;

* * * * *

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 May 1st of the crop year, coverage begins June 1st, unless we notify you in writing that your application is rejected because your PIVR, catalog, or supporting documentation (if requested by us) is not acceptable;

(ii) After May 1st, coverage will not begin until the 31st day after we receive all acceptable documents; and

(2) For continuous policies, the insurance period begins on each June 1st.

(b) 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;

(4) May 31st; or

(5) Abandonment of the crop on the basic unit.

10. Causes of Loss

* * * * *

(c) * * *

(3) Cold temperatures, if cold protection is required in the EPLPPS, unless you have installed adequate cold protection equipment or facilities and:

(i) There is a failure or breakdown of the cold protection equipment or facilities resulting from an insurable cause of loss specified in section 10(a) (the insured plants must be damaged by cold temperatures and the damage must occur within 72 hours of the failure of such equipment or facilities unless we establish that repair or replacement was not possible between the time of failure or breakdown and the time the damaging temperatures occurred); or

(ii) The lowest temperature or its duration exceeded the ability of the required cold protection equipment or facilities to keep the insured plants from sustaining cold damage;

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11. Duties in the Event of Damage or Loss

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(b) If you fail to obtain our written consent as required by section 11(a)(1), your claim will be denied on each basic unit for which written consent was not obtained.

12. Settlement of Claim

We will determine indemnities for any unit as follows:

(a) Determine the under-report factor or over-report factor, as applicable, for the basic unit;

(b) Determine the occurrence deductible;

(c) Subtract FMVB from FMVA;

(d) Multiply the result of 12(c) by the under-report factor or one minus the over-report factor (1.000 − over-report factor), as applicable;

(e) Subtract the occurrence deductible from the result in section 12(d); and

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

(1) For additional 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 and 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.

(h) In order to prevent your indemnity from being reduced when you have over-reported your basic unit value, the following must apply: FMVA plus the insured value of the plants listed on the verifiable sales records must support, within 10 percent, the basic unit value reported on the PIVR, revised PIVR, and Peak Inventory Value Report, if applicable, minus the total of all previous losses. Otherwise, any indemnity for that basic unit will be reduced by an over-report factor.

(i) If you elected basic units by non-contiguous land, in accordance with section 3(a)(ii), and you do not keep your records separate by unit, we will combine all basic units for which records were not kept separate.

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14. Written Agreements

(a) Written agreements may only be requested for plants not listed on the EPLPPS.

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15. Examples

Single Unit Example for an Under-Report Situation

Assume you have a 100 percent share and the basic unit value reported by you is \$100,000. Your coverage level is 75 percent. Your amount of insurance is \$75,000 (\$100,000 × .75). At the time of loss, we determine that the value of your inventory immediately before the loss (FMVA) is \$125,000, and the value after the loss (FMVB) is \$80,000. Your indemnity would be calculated as follows:

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

Step (2): The occurrence deductible is the lesser of a) .25 × \$125,000 × .80 = \$25,000; or b) \$100,000 × (1.00 − .75) = \$25,000;

Step (3): \$125,000 − \$80,000 = \$45,000 loss;

Step (4): \$45,000 × .80 = \$36,000 loss after the under-report factor is applied;

Step (5): \$36,000 − \$25,000 = \$11,000 loss after the occurrence deductible; and

Step (6): \$11,000 × 1.000 share = \$11,000 indemnity payment.

Single Unit Example for an Over-Report Situation

Assume you have a 100 percent share and the basic unit value reported by you is \$125,000. Your coverage level is 75 percent. Your amount of insurance is \$93,750 (\$125,000 × .75). At the time of loss, we determine that the value of your inventory immediately before the loss (FMVA) is \$100,000, and the value after the loss (FMVB) is \$50,000. You provide verifiable sales records containing an insured value of plants equaling \$10,000. Your indemnity would be calculated as follows:

Step (1): (\$125,000 ÷ (\$100,000 + \$10,000)) − 1.100 = .04 is the over-report factor;

Step (2): The occurrence deductible is the lesser of: a) .25 × \$100,000 × (1.000 + .04) = \$26,000; or b) .25 × \$125,000 = \$31,250;

Step (3): \$100,000 − \$50,000 = \$50,000 loss;

Step (4): \$50,000 × (1.000 − .04) = \$48,000 loss after the over-report factor is applied;

Step (5): \$48,000 − \$26,000 = \$22,000 loss after the occurrence deductible; and

Step (6): \$22,000 × 1.000 share = \$22,000 indemnity payment.

Peak Inventory Value Report Example

Assume you have a second loss on the same basic unit as the first example. 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, we determine that the value of your inventory immediately before the loss (FMVA) is \$124,000, and the value after the loss (FMVB) is \$58,000. Your indemnity would be calculated as follows:

Step (1): (\$160,000 − \$36,000)/\$124,000 = 1.00 is the under-report factor;

Step (2): The occurrence deductible is the lesser of: a) .25 × \$60,000 × 1.00 = \$15,000; or b) \$60,000 × .25 = \$15,000;

Step (3): \$124,000 − \$58,000 = \$66,000 loss;

Step (4): \$66,000 × 1.00 = \$66,000 loss after the under-report factor is applied;

Step (5): \$66,000 − \$15,000 = \$51,000 loss after the occurrence deductible; and

Step (6): \$51,000 × 1.000 share = \$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.

Signed in Washington, DC, on January 26, 2018.

Heather Manzano,

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