

# 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-AC13

#### 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 Common Crop Insurance Regulations, Nursery Crop Insurance Provisions by amending the definition of “liners.” FCIC also proposes to amend the Nursery Peak Inventory Endorsement to clarify that the peak amount of insurance is limited to 200% of the amount of insurance established under the Nursery Crop Insurance Provisions. The proposed changes will be effective for the 2008 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business October 31, 2006 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled “Nursery Crop Insurance Provisions,” by any of the following methods:

- By Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133-4676.

- E-mail: [DirectorPDD@rma.usda.gov](mailto:DirectorPDD@rma.usda.gov).
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection 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:** For further information, contact Claire

Elsea, Economist, Policy Administration Branch, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

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

##### E-Government Act Compliance

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

##### Unfunded Mandates Reform Act of 1995

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

##### Executive Order 13132

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

##### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact

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

##### Federal Assistance Program

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

##### Executive Order 12372

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

##### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule 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 under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process must be exhausted before any action for judicial

review of any determination made by FCIC may be brought.

### Environmental Evaluation

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

### Background

FCIC proposes to amend 7 CFR part 457 (Common Crop Insurance Regulations) by revising 7 CFR 457.162 (Nursery Crop Insurance Provisions) and 7 CFR 457.163 (Nursery Peak Inventory Endorsement). The provisions will be effective for the 2008 and succeeding crop years. The changes to the provisions for insuring nursery production are as follows:

#### *Section 457.162 Nursery Crop Insurance Provisions*

Section 1—FCIC is proposing to amend the definition of “liners” to remove language that specifies an established root system for a liner plant must reach the sides of the container and to remove language regarding the firm root ball. This change is necessary because liners are also known as starter plants, which often have not developed a root system that reaches the sides of the containers. While no one commented on this when the provisions regarding liners were first proposed, RMA has since received complaints from the nursery industry advising the cited language is agronomically incorrect and could adversely affect insurability of liners. By the time most liners have reached the point where the root system reaches the side of the container, they have already been sold or are ready to be sold. Therefore, without this change, most liners would be uninsurable while they are in the nursery and during the period of greatest risk of loss.

#### *7 CFR 457.163 Nursery Peak Inventory Endorsement*

Section 7—FCIC is proposing to amend provisions to clarify that the maximum increase in the amount of insurance under the Nursery Peak Inventory Endorsement is limited to twice the amount of insurance under the Nursery Crop Insurance Provisions. As stated, the peak amount of insurance is limited to 200 percent of the basic unit value. This means that if a basic unit value is \$50 and the producer had 50 percent coverage, the amount of insurance would be \$25. Under the current language, the producer could

increase the peak amount of insurance to \$100 (200 percent of \$50 basic unit value), which is a four fold increase in liability. FCIC never intended to allow more than a two fold increase in liability because to allow a larger increase could encourage insureds to carry minimum year-round coverage and maximize coverage under Peak Inventory Endorsement during high-risk periods. This could adversely affect indemnities paid and amount of premium owed to maintain an actuarially sound program.

### List of Subjects in 7 CFR Part 457

Crop insurance, Nursery, Reporting and recordkeeping requirements.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 the Common Crop Insurance Regulations effective for the 2008 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. Revise the definition of “liners” in paragraph 1 of § 457.162 to read as follows:

#### **§ 457.162 Nursery crop insurance provisions.**

\* \* \* \* \*

##### 1. Definitions.

\* \* \* \* \*

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

\* \* \* \* \*

3. Amend paragraph 7 of § 457.163 to read as follows:

#### **§ 457.163 Nursery peak inventory endorsement.**

\* \* \* \* \*

##### 7. Liability Limit.

The peak amount of insurance is limited to 200 percent of the amount of insurance established under the Nursery Crop Insurance Provisions.

Signed in Washington, DC, on August 21, 2006.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E6-14364 Filed 8-31-06; 8:45 am]

**BILLING CODE 3410-08-P**

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Medicare & Medicaid Services

#### 42 CFR Part 422

[CMS-4121-P]

RIN 0938-AO54

#### Medicare Program; Prohibition of Midyear Benefit Enhancements for Medicare Advantage Organizations Offering Plans in Calendar Year 2007 and Subsequent Calendar Years

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would prohibit Medicare Advantage (MAs) organizations, including organizations offering employer/union group health plans (EGHPs) (that is, plans that enroll both beneficiaries and employer/union members (plans open to general enrollment) and plans that are not open to general enrollment), from making midyear changes to nondrug benefits, premiums, and cost-sharing submitted in their approved bids for a given contract year. Programs of all-inclusive care for elderly (PACE) would not be subject to the provisions of this proposed rule and could continue to offer enhanced benefits as specified in our guidance for PACE plans.

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 31, 2006.

**ADDRESSES:** In commenting, please refer to file code CMS-4121-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. **Electronically.** You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/eRulemaking>. Click on the link “Submit electronic comments on CMS regulations with an open comment period.” (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)