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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 406 and 457

RIN 0563–AB65

Nursery Crop Insurance Regulations; and Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of nursery. The intended effect of this action is to provide policy changes to better meet the needs of nursery operators by adding new Nursery Crop Insurance Provisions to be effective for the 1999 and subsequent crop years, restricting the effectiveness of the current Nursery Crop Provisions and the Nursery Frost, Freeze, and Cold Damage Exclusion Option to the 1999 crop year only and adding a new Peak Inventory Endorsement.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Rob Cerda, Insurance Management Specialist, Research and Evaluation Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This Office of Management and Budget (OMB) has determined this rule to be not significant and, therefore, has not been reviewed by the 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 the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

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 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 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. 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.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Thursday, January 29, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 4399–4403, to revise 7 CFR 457.114, Nursery Crop Insurance Provisions, delete 7 CFR 457.115, Nursery Frost, Freeze and Cold Damage Exclusion Option and replace it with a new Peak Inventory Endorsement, and restrict the effect of the Nursery Crop Insurance Regulations (7 CFR part 406) to the 1995 and prior crop years. The revised provisions will be effective for the 1999 and succeeding crop years.

Since the nursery crop insurance program is already in its sales period, FCIC has elected to allow nursery producers the option of insuring their nursery crop under the existing Nursery Crop Insurance Provisions or these new Nursery Crop Insurance Provisions. As a result, the existing Nursery Crop Insurance Provisions and the Nursery Frost, Freeze, and Cold Damage Exclusion Option will be restricted to the 1999 crop year only. These new Nursery Crop Insurance Provisions will be published at 7 CFR 457.162.

Following publication of the proposed rule, the public was afforded 45 days to submit written and verbal comments and opinions. A total of 55 verbal and 138 written comments were received from an insurance service organization, reinsured companies, agents, nursery associations, producers, insurance company supervisors and loss adjusters, and florists' associations. The comments received and FCIC's responses are as follows:

Comment: A producer asked whether the changes in the proposed nursery provisions are in effect or just proposed.

Response: The changes in the nursery provisions will not become effective until publication of the effective date of this final rule in the **Federal Register**.

Comment: A crop insurance agent asked whether insurable entities are the same with the proposed policy as the current policy.

Response: The insurable entities are the same.

Comment: Two producers asked when the policy would be available.

Response: Upon publication of the final rule.

Comment: A crop insurance agent asked whether all states will be covered under the proposed policy.

Response: FCIC will offer nursery insurance coverage in all states except Alaska for the 1999 crop year.

Comment: A producer asked what is a marketable plant.

Response: A marketable plant is a plant that the insurance provider determines may be offered for sale into the wholesale market. FCIC has added a definition of ''marketable.''

Comment: An insurance service organization, two insurance companies, two nursery associations, a florist organization, two crop insurance agents and a producer expressed concerns with the eligible plant list. The commenters stated that the coverage provided by the nursery policy depends on the accuracy of the eligible plant list, which should include, (1) plant genus, species, and cultivar; (2) the plant's maximum insured value; (3) winter protection required and the areas in which they apply; and (4) plant unit designation. Other commenters stated that all nursery plants and cultivars that are hardy in the zones in which they are produced should be eligible for crop insurance. A commenter stated that producers will need a copy of the plant listing in order to accurately submit their plant inventory report.

Response: The eligible plant list includes the genus, species, and often cultivar of insurable plants, the maximum insurable value for those plants, the winter protection requirements for container material in the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zone for each county, and unit classification for each plant on the list. The definition of ''eligible plant list'' has been revised to include this information. The eligible plant list will be available to producers in each crop insurance agent's office. Each producer can also receive computer software that will assist them or agents in estimating the insurable value of the nursery inventory.

Comment: Two insurance companies and two crop insurance agents suggested the proposed crop provisions do not appear to exclude plants for retail sales. One commenter suggested that these sections should be changed so only wholesale producers of plant materials and those plant materials being grown for the wholesale market are covered. A commenter stated the proposed definition of ''nursery'' states that a majority of the plant materials must be sold in the wholesale market. The commenter was concerned that insurance was available for nursery operations where more than 50 percent of the plants may be sold retail. Another commenter suggested there should be clarification on the issue of insurability of field grown production of trees and vines grown for commercial use versus grown for retail sales. The commenter stated some nurseries growing for a commercial use sell to retailers, and there needs to be requirements to separate the commercial from the retail grower.

Response: FCIC's intentions are to insure wholesale producers of nursery plant materials. In discussions with producers prior to writing the proposed rule, FCIC became aware that wholesale producers of nursery plant material also may have some retail sales. FCIC has revised the definition of ''nursery'' to require at least 50 percent of gross revenues come from the wholesale sale of plants.

Comment: One commenter suggested changing the definition in section 1 ''policy renewal date'' noting this is the equivalent to the sales closing date.

Response: A sales closing date is the date by which all sales must be completed. For nursery, sales are permitted until May 31. However, FCIC wanted to have a fixed date by which the crop year will begin each year for continuing policies regardless of the date of application. The date is the policy renewal date.

Comment: A producer asked why the optional unit proposal had different classes for annuals and perennials.

Response: Prior to writing the proposed rule, many producers requested a division of units by type of plant material. Types of plants listed as eligible for optional units in section 2(c) of the policy are based on the classification system used by the American Nursery and Landscape Association's Handbook on Nursery Standards. Many producers recognize this as an authoritative source.

Comment: An insurance company asked whether container plants would be a separate unit from field grown nursery plants.

Response: FCIC has added the definition for ''practice'' and revised the provisions of sections 2(a) and 6(c) to clarify that containerized and field grown nursery plant materials will be separate basic units.

Comment: A producer asked whether units would be available on irrigated acres and non-irrigated acres.

Response: The nursery policy requires all nurseries to be irrigated to be insured unless otherwise specified in the actuarial documents. Basic units will be established only by container and field grown growing practices. Optional units will be available by plant types listed in section 2 of the policy.

Comment: An insurance company supervisor asked if the proposed Optional Unit Endorsement guidelines apply to catastrophic risk protection (CAT) policies.

Response: FCIC has revised the policy to incorporate the Optional Unit Endorsement into section 2. Optional units will now be available to producers who elect either the limited or additional level of coverage without the need to purchase an endorsement. Producers who elect CAT coverage are not eligible for optional units.

Comment: An insurance company and a producer association expressed concern with the plant price schedule compiled by FCIC. One commenter was concerned that the plant price schedule is not subject to public analysis and comment. Another commenter stated that producers must revalue inventory for insurance purposes using prices set by FCIC. The commenter stated that this requirement negates the simplification created by removal of the requirement that the producer file a projected inventory, and will cause an additional burden should the producer's inventory change during the year.

Response: The plant price schedule is a listing of plant prices determined by FCIC based on price information available from the nursery industry. FCIC determined that a fixed plant price schedule was essential to the continued offering of a nursery insurance program. A number of public oversight agencies found that FCIC was exposing the nursery program to potential abuse and litigation when it allowed individual nurseries to set their own prices. The plant price schedule will be available to producers and insurance companies by the contract change date in the same manner used by FCIC to issue rates, price elections, amounts of insurance and other information used to establish insurance coverage and determine crop indemnities. It should not impose any greater burden on producers to calculate the value of their inventory since only the price used is changed. Therefore, no change has been made.

Comment: An insurance company expressed a concern that plant size is the sole determinant of price in the plant price schedule, and that price variations caused by quality are not considered.

Response: The prices published in the plant price schedule recognize the most important and common pricing factor, which is size, at a standard level of quality. It would be impossible to include the quality variables for each plant type. If the quality of the plants are deficient, the insurance company can deny insurance on such plants. Therefore, no change has been made.

Comment: Two crop insurance agents and a producer asked whether the prices on the eligible plant list will be on a regional or national level. One commenter had a concern that prices will not be representative of regions. Another commenter asked whether all the cultivars will be listed.

Response: FCIC determined that adequate price information was not available on a regional basis. Therefore, the decision was made to offer national prices as a means of insuring the largest number of plants in all areas. For many plants, cultivars will be listed; however, many cultivars will not be listed. In cases where the plant is listed by genus and species but a specific cultivar is not listed, the price for the unlisted cultivar will be the price shown for genus and species of the plant.

Comment: A producer asked whether the value of the plants will be adjusted annually as plants mature.

Response: The prices contained in the plant price schedule recognize different sizes, which reflect different maturity levels. It is the producer's responsibility to value the plant inventory during and between crop years based on these prices.

Comment: A crop insurance agent asked when a producer may change price elections, coverage elections, etc.

Response: The Basic Provisions require all changes in price elections, coverage levels, etc., be made by the sales closing date.

Comment: A crop insurance agent asked whether there is a reduction in the wholesale price for field grown tree plant material that is not harvested. The commenter stated that the producers' costs for digging, moving, burlapping, and tying of the tree could be substantial.

Response: FCIC is not considering a reduction for unharvested field grown plant material at this time. FCIC recognizes that the cost for harvest can be substantial, but it could not identify a uniform percentage reduction that would be fair to all producers. FCIC will continue its research in this area and may adjust prices when sufficient information is available.

Comment: A producer association was concerned that a nationwide plant price schedule listing the maximum amount payable for insured plants would be inequitable. The commenter maintains that the best and fairest method for valuing insurable plants is to use the wholesale market value of the nursery inventory as stated in the producer's own catalogs. The commenter recognized FCIC's need to establish a crop insurance program that minimizes fraud potential. Nonetheless, the commenter asserts that quality plants command a higher market price and better producers will be penalized with the crop insurance program that subjects them to a lower national average price. The commenter was also concerned that substandard producers will be rewarded with a program that provides them with a higher average value for their plants.

Response: FCIC recognizes that there can be variation in the quality of plants produced, growing practices employed, and the prices received by producers for their plant material. However, this problem is no different from other crop insurance programs where actual market prices may be higher than FCIC's announced expected market prices. Most oversight organizations considered the pricing methodology employed in the current nursery program a serious risk for program abuse. FCIC has an obligation to protect its programs. FCIC has attempted to create an accurate and fair price list, while meeting its mandate to provide an actuarially sound nursery crop insurance program. Therefore, no change has been made.

Comment: A crop insurance agent asked whether an insured could buy a higher coverage level during the policy year.

Response: The producer must elect the coverage level for the crop year at the time of application or by the policy renewal date for subsequent crop years and any change the coverage level made after that date will not be effective until the next crop year.

Comment: Two insurance companies and a crop insurance agent stated that provisions contained in section 4(b) of the proposed rule would present difficult data processing problems if implemented. A commenter stated this provision allows insureds with a policy renewal date between March 31 and June 30 to choose either the current or the proposed nursery policy. The commenter stated, for example: If producer A has a renewal date of July 1 and on March 31 FCIC publishes contract changes that increase premiums and reduce indemnities, producer A will be covered by that new policy or not at all. Producer B has a renewal date of June 30. Producer B may pick either policy. The commenter stated if FCIC changes the policy again the following year, producer B will have another opportunity to pick the policy most disadvantageously to the company. The commenter also stated that the insurance company must maintain two systems for different policies and must track those different policies under two different Standard Reinsurance Agreements (SRA). Another commenter stated that many facets of the policies could become very confusing, such as (1) which Special Provisions apply; (2) which price listing is used; (3) which rates will apply; (4) what loss adjustment will be used; (5) which SRA would this come under; and (6) for what crop year.

Response: FCIC has revised specific provisions in section 9 of the policy so that the nursery policy can only be sold through May 31 and all continuing policies will have a common renewal date. The current insurance periods ends on September 30, 1998. Producers will have the option to insure their nursery crop under the existing Nursery Crop Insurance Provisions (7 CFR 457.114) or the new Nursery Crop Insurance Provisions (7 CFR 457.162) for the 1999 crop year only. Regardless of the option chosen, coverage will not be effective before October 1, 1998. FCIC has also revised section 4 to specify that all policies will have the same contract change date of June 30. After the 1999 crop year, all nursery crop policies under 7 CFR 457.114 will be terminated and producers will be required to apply for insurance under 7 CFR 457.162 to maintain or obtain insurance coverage.

Comment: A crop insurance agent asked what the difference is between the 12 month nursery plant inventory and the Peak Inventory Endorsement.

Response: The Peak Inventory Endorsement allows a producer to increase coverage for specific months where the value of the inventory may be higher than for the rest of the insurance period. Without this endorsement, producers would have to carry higher coverage throughout the insurance period, with unnecessary premium paid, or risk having uncovered losses. The Peak Inventory Endorsement is designed to help producers lower the premium cost by isolating peak amounts of inventory value and charging premium only for the period the peak insurance coverage is in effect.

Comment: A producer and a crop insurance agent asked whether plant materials not on the plant price schedule would be insurable by written agreement.

Response: Although FCIC is greatly expanding the number of insurable plants by including field grown nursery plants under these provisions, some plants may not be listed. To the extent that FCIC can determine the proper cold weather storage requirements for the container grown plant material, the cold hardiness zones for field grown material, and a scheduled price for each plant according to size and growing practice. Insurance by written agreement may be available. Plants insured by written agreement will be included on the eligible plant list in subsequent crop years.

Comment: A crop insurance agent stated that an inventory list of plants was necessary to adjust a loss.

Response: When loss adjustment occurs, loss adjusters must determine the value of the inventory just prior to and after the loss. This is done by a visual examination of the plants. FCIC determined that an examination of the existing plants on hand was more accurate than a plant inventory list since the inventory changes so frequently. If concerned, the policy permits insurance providers to require an inventory list of plants. However, since most losses tend to occur infrequently and as a result of catastrophic events, FCIC determined that requiring all producers to annually report plant inventory lists was too burdensome. Therefore, no change has been made.

Comment: A producer asked whether the dollar value of an inventory can be a lower dollar value than the national price.

Response: The nursery policy permits producers to select less than 100 percent of the price listed in the plant price schedule. Producers must make this election at the time of application or by the policy renewal date for all plants covered under the policy but cannot select different price percentages on individual plants or types of plants.

Comment: A producer asked why 100 percent of all the plants must be insured.

Response: FCIC has always required that all acreage of a crop in the county be insured under a policy. Nursery is no different. The nursery policy requires that all insurable plants listed on the eligible plant list in which the producer has a share in the county be insured.

Comment: A loss adjuster asked whether the plant inventory value report can be revised upward during the year.

Response: Section 6 of the Nursery Crop Insurance Provisions states the Plant Inventory Value Report may be revised until May 31st to reflect an increase in inventory value. Section 6 also states that insurance will attach on any proposed increase in inventory value 30 days after a written request is received unless the insurer rejects the proposed increase in your plant inventory value in writing.

Comment: An insurance company and a producer association stated that section 6(b) is not clear and asked if the policy is continuous.

Response: FCIC has revised section 9 of the policy to provide a date certain for the beginning and end of the insurance period to make it clear that this is a continuous policy. Language was also added to section 6 to make it clear that the plant inventory value report for continuing policies must be submitted by September 1 if the producer wants to change any inventory values.

Comment: An insurance company questioned whether section 6(c) excludes new nurseries that may not have sales records from previous years and what are the consequences of not having any sales records.

Response: Records of sales and purchases are not required as a condition of insurance except for producers insured under the catastrophic level of coverage. Since producers insured under the catastrophic level of coverage are limited to an amount of coverage based on previous year's sales, they may be required to submit such records. For producers covered by limited or additional levels of coverage, it is within the discretion of the insurance provider whether such records are necessary. This provision was intended to allow insurance providers to obtain additional information from high risk producers and will not exclude new producers from obtaining insurance.

Comment: An insurance company had a concern that the definitions of field market value A and B refer to the value ''in the unit'' before and after occurrence of a loss. The commenter stated that it would be helpful to state somewhere in section 6 that the value must be reported by unit. The commenter stated that the last sentence in section 6(d), which says errors in reporting may be corrected by us at loss adjustment time, may not be clear to the policyholder.

Response: Section 6(c) requires the producer to report the inventory value for each practice, which is the basic unit. Requiring an inventory report for each optional unit would place an undue burden on producers to accurately project inventory in multiple categories of plants over the insurance period. The difficulty of this task would likely result in numerous revisions of unit values or frequent instances of misreported unit values. Therefore, no change has been made.

Comment: An insurance company and a producer association suggested that a clarification may be needed in section 6(f). The commenter feels that this provision would allow shifting of plants between plant groups at loss time since some plants fall into more than one group.

Response: Since plants will be assigned to plant groups on the eligible plant list, there will be no opportunity for producers to reassign plants to a different plant group.

Comment: An insurance company and a producer association suggested FCIC consistently apply waiting periods. The proposed rule contains a 30-day waiting period for a Peak Inventory Endorsement, but only a 14-day waiting period for an inventory increase. The commenter stated it would be less confusing if the waiting period for a Peak Inventory Endorsement and for an inventory increase would be the same. The commenter stated the waiting period should be 14 days.

Response: FCIC has revised section 6 to require a 30 day waiting period for an inventory increase to be consistent with the waiting period for the Peak Inventory Endorsement.

Comment: An insurance company recommended changing section 6(h) to read ''You must insure the full value in accordance with section 6(e) of your insurable plant inventory.''

Response: FCIC has amended redesignated section 6(g) accordingly.

Comment: An insurance company and a producer association stated the proposed policy confuses and complicates the relationship between premiums and indemnities and thereby creates unnecessary work and invites abuse. One commenter stated: (1) Premiums are determined based on the plant inventory value report the producer prepares and the values should be reported by unit, not growing location; and (2) indemnities are determined by plant price schedule which lists the maximum amount payable for insurable plants. If inventory is valued according to the plant price schedule, producers need not separately value inventory. The commenter stated all they need do is list inventory and the insurers will calculate the premium from the plant price schedule. Moreover, while it is pointless for producers to value inventory above the maximum amount payable for the loss of that inventory, as determined by the plant price schedule, it may be profitable to overvalue inventory up to the price established by the plant price schedule. For example, if the plant price schedule establishes a price of $10 for a particular plant, a producer might value such a plant at up to $10 when, if fact, its true value is only $5. The commenters also asked how devalued (damaged) plants would be handled; a detailed plant inventory listing is not required but is the basis for determining the inventory value report. The commenter stated that a detailed plant listing must be a requirement, not an option. It is imperative that FCIC make available computer software that includes the plant price schedule and includes the appropriate reports required to determine the amount of insurance for the nursery by optional unit if applicable.

Response: According to the terms of the policy, inventory values are reported on the plant inventory value report by basic unit and the location of the plants in each unit must also be reported. The nursery plant prices on the plant price schedule will generally be close to the average price. FCIC recognizes that there will be instances where prices for a particular nursery may differ from the average price. However, during the establishment of the plant price schedule, FCIC did not encounter a high number of instances in which the producer's prices were materially lower for a large portion of the inventory. Therefore, FCIC does not perceive significant risk in producers being able to over value their inventory. FCIC designed the nursery insurance product to function efficiently using a minimum amount of paper for both the insurance delivery system and the insured, while protecting program integrity. Further, insurance providers who are concerned may require detailed plant listings. FCIC will have computer software that will assist producers and crop insurance agents in the valuation of the insurable plant inventory.

Comment: An insurance company noted that under the current policy the producer provides the insurance company with a listing of plants that will be grown during the insurance period. Based on that list, the company has the opportunity to determine if the cold protection equipment or facilities can adequately meet the cold protection requirements. The proposed policy does not require the producer to provide a detailed plant list. The commenter stated that the inspector may not know that the required cold protection is unavailable until a notice of loss is filed by the insured. The commenter also stated that the current inspection form provides a place to list the insurable plants, but if the loss adjuster does not know what plants are insurable, he or she will not be able to make that determination.

Response: A major objection to the current policy, voiced repeatedly by producers, was the amount of paperwork involved to establish coverage. It was FCIC's goal to provide an insurance product that would meet the needs of producers and the insurance companies while remaining actuarially sound. FCIC believes that detailed inventory reports present a significant barrier to program participation. When the application is first received, the nursery will be inspected. The inspector will be able to see the plants and the cold protection measures to determine if they meet the policy requirements. Thereafter, the nursery will be inspected after a loss. The loss adjuster will again inspect the plants and the cold protection measures to ensure compliance with the policy requirements. A detailed list of plants is not necessary to protect the program's integrity. Therefore, no change has been made.

Comment: A producer association asked what effect a revised plant inventory value report that decreases the amount of insurance would have on the crop year deductible.

Response: Permitting producers to revise inventory values downward on a regular basis is likely to create an excessive and unnecessary administrative burden. Therefore, FCIC has revised section 6(f) of the policy to specify that revisions in inventory value are only for increasing reported values. The availability of the occurrence deductible makes downward revisions to obtain a lower coverage unnecessary.

Comment: A crop insurance agent asked whether the proposed policy will have different premium rates based on classes of insured plants.

Response: At the present time, FCIC does not plan to offer insurance at different premium rates based on plant types. Premium rates may be adjusted in the future as actual experience is reviewed. However, FCIC anticipates different premium rates for the container grown and field grown nursery practices.

Comment: A crop insurance agent asked whether there will be an additional rate for optional units.

Response: For an additional premium, section 2 of the policy allows basic units to be divided into optional units by producers who elect limited or additional coverage.

Comment: An insurance company expressed concern about rating for the proposed policy. The commenter asked if the premium cost will change from 1998 to 1999 for the same inventory.

Response: This policy is substantially different in many respects from the current policy. FCIC is developing rates specific to the provisions of the new nursery policy. FCIC anticipates changes in rating structures across the country. In some regions, rates are likely to be higher and other regions' rates may be lower. For the 1999 crop year, producers with coverage under the existing nursery policy will be charged rates for the coverage under that policy.

Comment: Insurance companies recommended adding in section 7 ''any amount due us will be deducted from any loss payment.''

Response: FCIC has amended the provisions in section 7(c) to allow the deduction of any amount due under a FCIC reinsured crop insurance policy to be set off against any indemnity which may be due.

Comment: Insurance companies and a producer association had concerns with sections 7(b)(2) and (3). The commenters recommended: (1) The time frames as proposed for paying the premium in full be removed and substituted with 6 months; and (2) the insured have at least 30 days to pay the premium before interest begins. With respect to the requirement that 40 percent of the premium is due on the date the insurance inventory is accepted, the commenter questions what was the consequence if the amounts are miscalculated and an amount less than 40 percent of the premium is paid. The commenter asked whether coverage would be postponed until the 40 percent is paid. The commenter also asked the consequences if damage occurs in the interim and would the amount of insurance be prorated to the amount of a premium paid or would coverage be denied. A commenter questioned, if a revised plant inventory value report is submitted that increases the premium, whether the 40 percent must be paid with the report or is this additional amount billed. The commenter stated it would seem simpler to issue a billing after the amount of insurance is established and require the full amount to be paid within 30 to 60 days.

Response: Based on the comments, FCIC finds no substantial benefit in its original proposal to collect premiums in installments. Therefore, FCIC has determined that it is in the best interest of the nursery program to establish one premium billing date. Sections 7(b) and (c) have been revised to use the premium provisions in the Basic Provisions regarding premium billing dates and the offset of amounts owed from indemnity payments. The billing date should be sufficiently late in the crop year so that all premium adjustments for the purchase of Peak Inventory Endorsements should have been made.

Comment: An insurance company asked whether FCIC will have a separate document for the producer to sign, certifying that the producer fully understands that only insurable plants are covered. The commenter stated they would prefer that producers be required to submit a list of their plants to their agent.

Response: Many crops have types or practices that are uninsurable and certification is not required. Since the policy is clear that only those plants listed on the eligible plant list are insurable and such list is available to producers, certification is not required for nursery. As stated above, FCIC found the requirement that all producers annually submit plant lists to be too burdensome and that amount of insurance, losses and indemnities could be determined without requiring detailed inventory reports in advance of a loss. Therefore, no change has been made.

Comment: An insurance company, a crop insurance agent and two producers asked whether the policy covered nursery plants after they are dug, balled and burlapped until the time they are sold. One commenter suggested clarification on field grown production for situations where plants are removed from the ground and damage occurs while in storage.

Response: Section 9 is revised to specify that balled and burlapped plant material is insurable until it is removed from the nursery because FCIC considers the balling and burlapping of field grown plant material a standard practice for field grown nursery material. It is appropriate to continue insurance coverage after the nursery material was balled. FCIC will specify management practices needed to care for balled and burlapped plant material in the Special Provisions (For example: FCIC may require shade and irrigation for balled and burlapped plant material in some circumstances). Insurance coverage will end when the plant material is removed from the nursery or at 11:59 p.m. on September 30 of the crop year.

Comment: A crop insurance agent asked whether Christmas trees are covered under the policy. The commenter stated that it seems they would be covered if the tree is listed in the eligible plant list and there were an established price. The commenter also asked whether insurance would end once the trees are cut and sold as a wholesale crop.

Response: FCIC did not intend to insure Christmas trees. Specific language was added to section 8 clarifying this exclusion. FCIC will consider insuring Christmas trees under a separate policy.

Comment: A crop insurance agent asked whether the proposed rule will cover seedbed and transplant beds.

Response: To be insurable, plants are required to be produced in standard nursery containers or field grown and must be a size specified in the eligible plant list. It is unlikely that seedbed or transplant beds would meet these criteria. If they did, and all other requirements for insurability are met, they may be insured.

Comment: An insurance service organization, a crop insurance agent, and two producer associations expressed concern that the proposed policy does not cover trays, cellpacks, and plant containers less than 3 inches in size, which form a significant part of the industry.

Response: In conducting research regarding insurability of small containers (less than 3 inches), FCIC determined that these containers presented a unique set of risks that would require special underwriting considerations. FCIC does not have sufficient information to offer such coverage. Further, FCIC has been informed that plants in containers less than 3 inches are generally produced in greenhouses, where private insurance is available. Therefore, no change has been made.

Comment: An insurance service organization had a concern that the proposed policy states that plants must be grown under an irrigated practice unless otherwise provided on the actuarial table or by written agreement. The commenter asked how the written agreement would be completed.

Response: The nursery policy requires that the insured crop be irrigated. The policy also contains a provision that allows FCIC to waive the irrigation requirement for field grown nursery plant material if appropriate. FCIC will list any waiver of the irrigation requirement in the Special Provisions. FCIC has included the procedures for approval of written agreements.

Comment: Two producer associations had concerns with the provisions of section 8 that state: (1) ‘‘The insured nursery plants are those determined by us to be acceptable’; and (2) ‘‘the insured nursery plants are those that are grown in an appropriate medium.’’ The commenters requested clarification of ‘‘acceptable’’ and ‘‘appropriate.’’

Response: This provision of the policy is designed to protect insurance providers from accepting or being forced to accept plant materials that are damaged or are growing in a soil medium, particularly when containerized, that is inappropriate for the healthy growth of nursery plants. Generally available horticulture reference materials can be used to determine appropriate growing media. Such references would include factors such as soil composition, soil pH, drainage requirements for the particular plant material, etc. It is impossible to cover the range of possibilities in the insurance contract and, therefore, it will be within the loss adjusters' authority to determine the acceptability of the plants and the appropriateness of the growing medium in the event of loss.

Comment: An insurance company suggested adding to section 8(c) ‘‘while the plant is located in the nursery’’ at the end of the sentence.

Response: FCIC has revised the provision accordingly.

Comment: An insurance company questioned whether it is required to inspect the nursery for new applicants. The commenter stated it appears there are four required inspections, each involving a great deal of work, before coverage can be accepted: application, plant inventory value report, inspection, and payment of 40 percent of the premium.

Response: The policy requires an inspection to determine the acceptability of the nursery plant materials and an inspection for determining the amount of any loss claimed by the policyholder. No other inspections are implied or required by the nursery policy. FCIC has removed the 40 percent premium requirement and there is no more work required for a plant inventory value report than there would be for an acreage report. Therefore, no other changes have been made.

Comment: A producer asked when a plant is considered an insurable plant (i.e., seedlings).

Response: Plants growing in containers that are at least 3 inches across which are at least the minimum insurable size as specified in the eligible plant list, for which a price can be determined from the plant price schedule or approved written agreement, and are not rejected as unacceptable are insurable.

Comment: Two insurance companies, an insurance agent, and two producers asked about the policy renewal date.

Response: Based on the numerous complaints regarding the complexities associated with administrative and operating procedures, FCIC has determined that it is in the best interest of the insurance delivery system to create a common renewal date for all policies. FCIC has revised section 9 of the policy to provide a renewal date of October 1. Although, producers will be permitted to purchase an initial nursery policy after October 1, the policy will annually renew on October 1.

Comment: A producer association asked if a producer who currently does not have nursery coverage may buy a policy before October 1, 1998, for the 1999 crop year.

Response: Once the final rule is published and FCIC files the policy, rates, and other information, sales may begin. For the 1999 crop year only, producers can elect to obtain coverage under either the existing nursery policy or this new nursery policy. However, although either policy may be purchased prior to October 1, coverage will not begin prior to October 1. With respect to the new nursery policy, to be insured as of October 1 of any crop year, producers must submit an application at least 30 days prior to that date.

Comment: An insurance company questioned the elimination of the sales closing date. The commenter stated it could cause an insured to wait until the producer could make a prediction as to the risk. For example, a producer in Florida might purchase a nursery policy in June or July, when there is a forecast for a high number of hurricanes or the insured may use the forecasts to increase their level of coverage.

Response: FCIC has revised section 9 of the policy to state that no policy may be purchased after May 31 to eliminate the ability to purchase a policy for only those periods where a loss is more likely. Further, the final rule states that coverage will begin 30 days after the application is received by the crop insurance agent. Therefore, no change has been made.

Comment: An insurance company stated that the movement to property and casualty philosophy of ''no sales closing date'' causes administrative issues that do not apply to other Federal crop insurance programs. The commenter stated it appears that developmental and assigned risk fund selections, premium due dates, premium billing cycles, renewal dates, issuing provisions and inventory deadlines could potentially occur each day of the year under the proposal, which increases the burden on the processing companies. The commenter stated if the ''no sales closing date'' concept is retained, a prorated premium for the first year insured up to some renewal date that is common to all policies would alleviate this problem.

Response: FCIC has revised section 9 of the final rule to state the policy will be offered for sale until May 31st for the year of application. After the year of application, if the policyholder has not canceled or terminated, the policy will have a common renewal date of October 1 with no 30 day waiting period. The premium will be prorated for the year of application to reflect the risks from any reduction in the coverage period until September 30.

Comment: An insurance company expressed a concern regarding the determination of the reinsurance year, especially for applications accepted after one reinsurance year ends and another begins.

Response: FCIC has revised section 9 of the policy to require all initial policies be purchased by May 31. This will ensure that all sales will occur in the same reinsurance year.

Comment: A producer asked whether the proposed nursery policy will allow a producer to cancel in mid-year.

Response: A producer is not permitted to cancel a policy for the crop year once the application is submitted unless the producer sells or otherwise divests himself or herself of his or her share of the nursery. The producer may cancel the policy at any time effective for the next crop year.

Comment: A producer asked when insurance ends on bare root stock.

Response: Section 9 has been modified to specify that insurance ends for bare root nursery stock with the removal of the nursery stock from the field.

Comment: A crop insurance agent asked whether the proposed policy will be on a 12-month basis from the date of sale.

Response: FCIC has revised section 9 of the policy to permit sales throughout the crop year until May 31. The insurance period will end on September 30 of each crop year, regardless of when the policy is purchased. The premium will be prorated for the period of risk.

Comment: A crop insurance agent and a producer asked whether the proposed policy is a continuous policy from year to year.

Response: The nursery policy is continuous from year to year provided that the premium is paid in full.

Comment: A crop insurance agent asked if the proposed nursery policy is released after July 1, 1998, whether a carryover insured can buy insurance for protection under the new policy between July 1 and September 30. The commenter also asked how this might affect a current 1998 policy.

Response: Once the final rule is published and FCIC files the policy, rates, and other information, sales may begin. However, no coverage will begin before October 1, 1998. For the 1999 crop year only, producers will have the option to be covered under their existing policy or the new nursery policy. Thereafter, only the new policy will be available.

Comment: A producer asked whether it is possible to change the effective date of the policy. The commenter stated this would require insurers to short rate the nursery policy.

Response: The effective date of the policy will not be changed since it corresponds with the effective date of the current nursery policy. FCIC has revised the new nursery policy to specify a single policy renewal date and a limited sales period. FCIC will prorate the premium for partial year insurance periods.

Comment: An insurance company asked if a policy is canceled or terminated, how soon could the policy be reinstated (since there are no sales closing dates in the proposed provisions).

Response: Once a policy is terminated, it cannot be reinstated unless allowed under 7 CFR part 400, subpart U. Under section 9 of the policy as revised, producers can make new application for a policy until May 31.

Comment: An insurance company questioned whether the price list, rate changes, etc., take effect based on the date the application is signed or the date coverage begins (30 days later or when the insurance inventory is accepted).

Response: For the 1999 crop year only, the plant price schedule, rate changes, etc., take effect upon publication by FCIC of such information for the existing policy and the new policy. Thereafter, such policy terms will take effect on the date insurance attaches. The terms of the policy will be fixed for the subsequent crop years by the contract change date.

Comment: A producer association asked whether the proposed changes provide payment for removal of the damaged plant materials.

Response: The Federal Crop Insurance Act only authorizes payment for damage to insured plant material. There is no authority to provide coverage for removal of damaged plant material.

Comment: A producer asked whether the proposed policy provides coverage only against the ''death'' of the plants or whether the policy also covered damage that leaves plants unmarketable.

Response: Damage from an insured cause of loss that renders a plant unmarketable during the insurance period or substantially delays the producers' ability to sell the plant would be covered. Losses will be determined using FCIC approved loss adjustment procedures.

Comment: A producer asked what happens if the plants do not grow to their expected size due to drought.

Response: The nursery policy does not guarantee the plant will reach a producer's expectation. FCIC added a provision in section 10 that specifically excludes coverage for failure of the plant to reach an anticipated size due to drought. FCIC considered such coverage but could not accurately determine an amount of loss for failure of a plant to reach an anticipated size. Drought is a covered cause of loss if the plant is destroyed or damaged to the extent that it is unmarketable during the insurance period.

Comment: A producer asked what the irrigation requirements are for nursery producers.

Response: Section 8 of the nursery policy states that adequate irrigation equipment and water to irrigate all insurable nursery plants must be available at the time coverage begins and throughout the insurance period, unless otherwise provided by the actuarial documents or by written agreement. These determinations will be made during inspections conducted prior to the acceptance of insurance by the insurance provider and at the time of loss. It is not possible to provide more detailed requirements because these will vary based on the type of nursery operation and its location. The definition of ''irrigated practice'' has been revised to require sufficient water to sustain the normal growth of the plant and provide cold protection for applicable plants as described in the eligible plant list published by FCIC.

Comment: A producer asked whether drought will be covered as a cause of loss for field grown plants that are not irrigated because most producers in their region do not irrigate field grown nursery plants.

Response: The policy will only cover drought for non-irrigated plants as an insurable cause of loss if the irrigation requirement is waived by the actuarial documents or by written agreement.

Comment: A crop insurance agent asked whether earthquake is an insurable cause of loss.

Response: Section 10 lists earthquake as an insured peril.

Comment: A crop insurance agent asked whether excessive rain would be considered a cause of loss if the moisture causes a disease on the plant.

Response: Excessive rain and its consequences are considered an insurable cause of loss. However, disease for which control measures exist is specifically excluded as a cause of loss in section 10.

Comment: A crop insurance agent questioned section 10(b)(4) and recommends changing this section to read ''cold'' instead of frost and freeze, because plant materials can be damaged at less than freezing temperatures.

Response: FCIC has amended the provision accordingly.

Comment: A crop insurance agent, a producer association, and an insurance company stated a need to identify criteria and procedures for payments of disease or insect claims.

Response: Within the loss adjustment procedures, loss adjusters will be given specific instructions for documenting claims for these causes of loss. Therefore, no change has been made.

Comment: A producer asked whether the policy covered damage that becomes apparent over time. For example, the commenter questioned, if plants are damaged by flood and damage does not become apparent for a year, whether the producer could make a claim for indemnity.

Response: The policy provides protection against causes of loss that occur within the insurance period and that damage insured plants. The insured may make a claim for damage that occurred during the time the policy was in effect even if the insurance period has expired as long as a claim for indemnity is filed within 60 days after the insurance period has ended.

Comment: A producer questioned whether the policy would cover the cost of replacement plants if those plants to be shipped in March and April were underwater for 7 to 10 days in November and December and the producer decided to buy replacement plants for shipment in March and April due to concerns about the viability of the plants in inventory.

Response: The nursery policy covers damage to the insured nursery stock from insured causes of loss. If the flooded plants were damaged to the extent that they were unmarketable during the crop year, indemnities would be paid in accordance with loss provisions of this policy. There is no coverage provided for costs associated with replacing stock.

Comment: An insurance company recommended that section 10(b)(4)(i) be changed to indicate that proof of the repair or replacement of cold protection equipment or facilities was not possible and would not be required for the first 72 hours after failure of the equipment or facilities.

Response: FCIC believes this section is stated clearly. Therefore, no change has been made.

Comment: Two producers had concerns that the penalties for over and under reporting the value of the plant inventory are extremely severe. One commenter stated that the penalty for over reporting in particular is inconsistent with other insurance products. Another commenter stated the current policy establishes the amount of deductible on a percentage basis, based on the value of the inventory at the time of loss, and the proposed rule would fix the deductible as a percentage of the inventory value reported at the beginning of the policy year.

Response: There is no penalty for under or over-reporting inventory value. Producers are unlikely to over-report their inventory since it would increase their premium and decrease the likelihood that they will receive an indemnity since their crop year deductible will be higher. However, there is an incentive for producers to under-report their inventory value to reduce the amount of premiums owed. The claims provisions adjust the amount of indemnity by the proportional amount of the under-reported value to be commensurate with the amount of liability for which the producer paid. Therefore, no change has been made.

Comment: A crop insurance agent asked whether the deductible will be prorated when the value of inventory reported by a producer is less than the value found at the time of a loss.

Response: The policy requires the producer to report the full value of the nursery plant inventory or a reduced indemnity will be received in the event of a loss. As stated above, section 12 provides for indemnity payments in proportion to the amount of insurance purchased when the insured reports less than the full value of the insurable nursery inventory. For example, a producer who declares inventory worth sixty dollars when it is worth one hundred dollars will be paid 60 cents for each dollar that otherwise would have been paid as an indemnity under the terms of the policy. FCIC believes the under reporting provision of this policy is fairer to the producer than the provisions of the current policy for this situation since the policy provides producers with the insurance coverage for which a premium was paid.

Comment: A crop insurance agent asked whether units have an occurrence deductible or are all occurrence deductibles summed to meet the crop year deductible. The commenter also asked whether there would be any more occurrence deductibles for the crop year if the crop year's deductible is met.

Response: If the occurrence deductible is met, an indemnity will be paid on each affected unit. All losses reported in a timely manner will be accumulated to meet the crop year deductible. After the crop year deductible is reached, producers no longer face a deductible for subsequent losses. However, it should be noted that the insurance limits are reduced with each loss. For example, if a producer has an amount of insurance of one hundred dollars and is paid a $30 loss, the remaining amount of insurance on that policy is $70. Should the producer restock lost plant material without reporting the increase to the insurer as prescribed in section 6, a subsequent indemnity would be calculated using the under report factor.

Comment: Two crop insurance agents had concerns that the proposed rule contains changes that greatly diminish the value of the nursery crop insurance program for producers who purchase the CAT level of coverage. The ''monthly loss deductible'' contained in the current program has been eliminated from the proposed rule. The commenter stated the replacement ''occurrence deductible'' has been added as a part of the Optional Unit Endorsement but it is not applicable for CAT policies. The commenter also stated the ''crop year deductible,'' which is applicable to CAT policies, penalizes producers if their inventory varies either upward or downward from the ''accepted plant inventory value report.'' An agent had a concern that the plant inventory values of many nurseries will vary 10–40 percent between the highest and lowest monthly inventories during the year. The commenter stated that the current nursery crop provisions allow the producer to establish maximum liability based on the highest monthly inventory value, but establish the monthly loss deductible based on the inventory on hand at time of loss. The commenter stated the proposed rule requires the grower to furnish a single plant inventory value that sets the amount of insurance liability and also the crop year deductible. The agent also stated the crop year deductible will increase if the plant inventory value, at the time of loss, is greater than the accepted plant inventory value, but will not decrease if the plant inventory value, at the time of loss, is less than the accepted plant inventory value. The indemnity will be further reduced by a coinsurance factor if the plant inventory value, at the time of loss, is greater than the ''accepted plant inventory value report.'' The commenter stated that these deductible changes in the proposed rule will result in producers not being indemnified for losses in excess of 50 percent damages if their plant inventory value, at the time of loss, varies either upward or downward from the accepted plant inventory value. An agent stated that heavy sales in the spring and fall can result in 20–25 percent of the annual sales occurring in one month. While these plants are restocked, they may not be restocked on the same day they are sold, resulting in significant plant inventory variations. The commenter stated the nursery crop insurance program is the only crop insurance program that requires producers to project plant inventory values for the next 12 months and then penalizes the producer (insured under a CAT policy without an occurrence deductible) if the plant inventory value varies from that single projected plant inventory value. The inventory reporting requirements in the proposed rule require the grower to report one inventory amount even though the grower knows the inventory varies throughout the year. The commenter also stated that those who purchase CAT level policies are, in instances where they have over reported their inventory, incapable of recouping 50 percent of their inventory at 55 percent of its price, as mandated by the Federal Crop Insurance Reform Act of 1994. The commenter suggests using the deductible language being proposed in the Optional Unit Endorsement. That would allow all policyholders to have benefit of a deductible.

Response: FCIC considered the large number of comments received regarding its proposal to allow an occurrence deductible only to insureds who purchase an Optional Unit Endorsement. However, the Act does not allow optional units under CAT policies. CAT is only intended to provide a basic level of coverage and admittedly the coverage available is not as good as that available under limited or additional coverage policies. Since limited and additional coverage policies charge a premium, it is only equitable that the coverage provided be better. It is up to the producer to determine which coverage best meets his or her risk management needs.

Comment: An insurance company asked whether all units must be adjusted before paying a loss, or only the units in a loss situation.

Response: An inventory of the nursery plant material in the basic unit is required at the time of loss to determine the deductible and to determine if the basic unit values have been correctly reported. While this is a departure from other crops FCIC insures with optional units, it is not different from the current policy. The current policy requires the same determination to establish the monthly deductible and compliance with the reporting requirements of the current policy.

Comment: An insurance company asked about the need for the proposed policy provision that requires losses to be 1 percent or $250 once the crop year deductible has been met.

Response: FCIC has deleted this provision.

Comment: An insurance company and a crop insurance agent questioned section 12(e) which states, ''that the value of any insured plant inventory will be determined on the basis of our appraisals.'' The commenter stated that section 6(d) and (e) states the value of the insured plant inventory is based on the plant price schedule. One commenter suggested that, because of the lack of a mutually agreeable method of determining salvage values and rehabilitation periods, a default percentage of loss should be incorporated into the policy.

Response: FCIC has deleted section 12(e) from the proposed rule.

Comment: Two insurance companies recommended an example of a loss calculation be included in the provisions.

Response: FCIC has included examples of loss calculations in section 15.

Comment: An insurance company and a producer had concerns with section 14(b)(1) and (3). The commenters stated section 14(b)(1) indicates no written agreements for nursery will be continuous, but would have to be requested again each subsequent year if the situation still exists. The commenter stated section 14(b)(3) refers to written agreements ''submitted after the application for insurance or the policy renewal date * * *.'' should be changed to read ''a written agreement submitted after the application the initial year, or after the policy renewal date in subsequent years * * *.''

Response: The written agreements are, by design, temporary and intended to address unusual circumstances. If the condition for which a written agreement is issued exists each crop year, the policy or Special Provisions should be amended to reflect this condition. Therefore, no change has been made.

Comment: An insurance company recommended changing the definition of a peak amount of insurance from ''* * * elected under the crop provisions * * *'' to read ''* * * elected for the crop and county. * * *''

Response: Such a change may mislead producers into thinking that they may select different coverage levels under the Peak Inventory Endorsement than the Crop Provisions. Therefore, no change has been made.

Comment: An insurance company asked whether the rate charged for the Peak Inventory Endorsement will be the same as the annual rate, prorated for the increase.

Response: The rate for the peak inventory endorsement will be the same as the annual rate adjusted for seasonal changes in risk. These adjustments will be contained in the actuarial documents.

Comment: An insurance company asked if the peak inventory value report must be submitted ''on our form.'' The commenter asked whether this will be the same as the regular plant inventory value report, or whether a separate form necessary.

Response: The peak inventory value report is a separate form.

Comment: A producer group asked whether more than one Peak Inventory Endorsement could be purchased during the course of the insurance period.

Response: Section 2(b) of the Peak Inventory Endorsement allows the purchase of up to two Peak Inventory Endorsements during the crop year unless the producer has suffered an indemnified loss and restocked the nursery. In such case, the producer could purchase an endorsement each time the nursery is restocked after a loss in addition to the two other Peak Inventory Endorsements authorized.

Comment: An insurance company and a producer association asked if the occurrence deductible in the Optional Unit Endorsement is on an optional unit basis and stated the occurrence deductible is confusing particularly when the amount of insurance is greater than field market value A. The commenter stated it appeared that the deductible has decreased due to the endorsement. The commenter asked whether the crop year deductible, as well as the occurrence deductible, must be satisfied prior to any indemnity payment.

Response: The occurrence deductible applies on a unit basis, optional or basic as appropriate. FCIC acknowledges that the occurrence deductible adds a certain amount of complexity and, therefore, has included a more detailed example. The occurrence deductible must be satisfied before any indemnity is paid on a unit.

Comment: Insurance companies and a producer association observed that there are 13 optional units based on plant types and asked when the producer must select the plant type for their inventory. One commenter asked whether the eligible plant list establishes the plant type.

Response: The eligible plant list will contain all plants eligible for insurance. Each plant will be assigned a plant type, which will be its optional unit designation. Even though a plant may be classified in more than one type, FCIC will assign each plant a single type for insurance purposes.

Comment: An insurance company asked whether the ''premium rate for optional units'' used in section 5 of the Optional Unit Endorsement is the correct terminology, or whether it should be ''premium factor for optional units.''

Response: FCIC has removed the Optional Unit Endorsement from the policy. Section 7(a) allows for a premium adjustment for optional units.

Comment: A producer asked whether the producer has to declare: (1) The value of the plants within each unit grouping; and (2) the maximum amount of insurance for each group. The producer also asked if the value reported for each unit has to sum to the total insurance for each basic unit.

Response: The policy requires the value reported for the basic units are accurate for determining compliance with the insurance to value provisions of the policy. The value reported for any unit cannot exceed the total for the basic unit and at any given point in time, the values for each unit should be approximately the same as the total value for the basic unit to avoid paying unnecessary premium or being subject to the underreporting provisions. When insurance to value requirements are not met, losses are determined according to section 12(b).

In addition to the changes described above, FCIC has made minor editorial and format changes that did not change the terms of the proposed provisions. FCIC also made the following revisions:

1. The definition of ''crop year'' is revised to clarify the day on which the crop year would begin and to allow for a policy renewal date common to all policies. The definition of ''crop year deductible'' is revised to allow a deductible percentage multiplied by the sum of all plant inventory value reports for a practice including peak inventory reports. The definition of ''eligible plant list'' is revised to allow FCIC to publish this document in electronic format. The definition of ''field market value A'' is revised to clarify its application to undamaged insurable plants in the basic or optional unit. The definition of ''field market value B'' is revised to clarify its application to damaged insurable plants in the basic or optional unit. The definition of ''irrigated practice'' is revised to provide cold protection for applicable plants as specified in the eligible plant list. The definition of ''nursery'' is revised to require a business enterprise that derives at least 50 percent of its gross income from the wholesale marketing of plants. The definition of ''plant price schedule'' has been revised to allow FCIC to publish this document in electric format. The definition of ''policy renewal date'' is eliminated because a common renewal date has been established common to most policies. The definition of ''price level'' is eliminated because the price level is the equivalent of the price election. Although new to the nursery program, this is a general program feature and FCIC believes it does not require a separate definition. The definitions for ''field market value C,'' ''loss,'' ''occurrence deductible,'' ''under reporting factor'' are added to allow FCIC to simplify section 12. A definition for ''deductible percentage'' is added to improve policy readability in the definition of ''crop year deductible'' and ''occurrence deductible.'' A definition for ''practice'' is added to clarify separate insurable practices will be standard nursery containers and field grown. A definition for ''price election'' is added to improve policy readability in the definition of ''amount of insurance''. The definitions of ''Act,'' and ''practice value,'' are added for clarity.

2. Section 2(b) is revised to eliminate reference to the Optional Unit Endorsement.

3. Section 5 is revised to eliminate the phrase the ''policy renewal date'' and a cancellation and termination date of September 30 was added. This change was made in response to FCIC's decision to create a single policy renewal date.

4. Section 6(b) is revised to require producers to submit a plant inventory value report not later than September 1 preceding any subsequent crop year to correspond with the change to a single policy renewal date.

5. Section 6(c) was modified to add ''practice value'' to clarify FCIC's decision to treat container and field grown nursery plant material as separate units.

6. Section 6(f) was modified to clarify the intention of FCIC to permit upward revisions to the plant inventory value report.

7. In section 6(g) of the proposed rule, the reference to the Peak Inventory Endorsement has been deleted. Section 6(h) is redesignated 6(g).

8. Section 6(h) was added to limit the amount of insurance available for catastrophic level policies in order to avoid over reporting of inventories.

9. Section 7(a) is revised to delete the phrase ''* * * and by your share'' because the amount of insurance uses the share in that calculation. Also, the term ''for each basic unit'' has been added to allow container and field grown nursery plant material to be insured as separate basic units.

10. Section 7(b) has been revised to clarify the premium will be adjusted for partial crop years. In addition, premium will be charged for the entire month for any calendar month during which an amount of coverage is provided under the nursery provisions.

11. Section 7(d) has been deleted since the interest provisions are in the Basic Provisions.

12. Section 7(e) has been deleted because plant inventory values can no longer be reduced.

13. Section 8(a) through (j) is reordered to improve readability. The provisions regarding woody, herbaceous or foliage ornamental plants are deleted because the insurable types of plants are specified in the eligible plant list.

14. Section 9(a) is revised to state that for the year of application, coverage begins 30 days after your application is received by the agent unless it is rejected. Added provisions for the 1999 crop year only, the 30 day delay in coverage will not apply to your container nursery crop if it is currently insured under the present policy and you elect to cancel such policy and you apply for the new nursery policy by November 30, 1998.

15. Section 10(a)(1) is revised to permit restrictions on adverse weather as a cause of loss.

16. Section 12 has been revised for clarification.

17. Section 14(a) of the proposed rule refers to 18(g). It has been corrected to 18(a). Section 14(b)(3) refers to 18(c) and it has been corrected to 18(e).

18. Section 15 was added to show examples of nursery calculations.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. It is imperative that these provisions be made final as quickly as possible so that the reinsured companies and insureds may have sufficient time to implement the new provisions in time for sale for the 1999 crop year. The policy currently in effect is limited to container plants and offers no protection to nursery producers that produce field grown nursery plants. In order to expand coverage to those producers of field grown nursery plants for the 1999 crop year, it is necessary to make these changes immediately. The existing nursery policy will continue in effect for the 1999 crop year and will be terminated at the end of the 1999 crop year.

List of Subjects in 7 CFR Parts 406 and 457

Crop insurance, Nursery, Reporting and record keeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Nursery Crop Insurance Regulations (7 CFR part 406) and revises and reissues the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1999 and succeeding crop years, to read as follows:

PART 406—NURSERY CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 406 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading is removed.

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

5. The introductory paragraph of § 457.114 is revised to read as follows:

§ 457.114 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 1999 crop year only are as follows:

* * * * *

6. Section 457.162 added to read as follows:

§ 457.162 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Nursery Crop Insurance Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Act. The Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.*

Amount of insurance. For each basic unit, your practice value multiplied by the coverage level percentage you elect, multiplied by your price election, and multiplied by your share. Your accumulated paid losses during the crop year for each basic unit or the optional units will not exceed your amount of insurance.

Crop year. The period beginning the day insurance attaches and extending until 11:59 p.m. of the following September 30. Crop year is designated by the calendar year in which it ends.

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

Deductible percentage. An amount equal to 100 percent minus the percent of coverage you select.

Eligible plant list. A list published by FCIC in electronic format and available from your agent that includes the botanical and common names of insurable plants, the winter protection requirements for container material and the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zones for each county, and the unit classification for each plant on the list. A paper copy of the eligible plant list is also available from your agent.

Field grown. Nursery plants planted and grown in the ground without the use of any artificial root containment device. In-ground fabric bags are not considered an artificial root containment device.

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 unit, optional or basic, as applicable.

Field market value B. The value of the insurable plants, based on the prices contained in the plant price schedule, in the basic or optional unit, as applicable, following the occurrence of a loss as determined by our appraisal plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis, optional or basic, as applicable.

Field market value C. The value of undamaged insurable plants based on the prices contained in the plant price schedule for all types within the basic unit 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 basic unit at the time of loss to ensure that you have not underreported your plant values.

In-ground fabric bag. (Also called a grow bag or a root control bag). A porous fabric bag made of a non-biodegradable material such as polypropylene that typically has a plastic bottom, and is used for growing woody plants in the ground.

Irrigated practice. In lieu of the definition in the Basic Provisions, the application of water, using appropriate systems and at the proper times, to provide the quantity of water needed to sustain normal growth of your insured plant inventory and provide cold protection for applicable plants as specified in the eligible plant list.

Loss. Field market value A minus field market value B.

Marketable. Of a condition that it may be offered for sale in the market.

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

Occurrence deductible. This deductible allows a smaller deductible than the crop year deductible to be used when; (1) Inventory values are less than the reported practice value, or (2) you have elected optional units. The occurrence deductible is the lesser of: (a) The deductible percentage multiplied by field market value A multiplied by the under report factor; or (b) the crop year deductible.

Plant inventory value report. Your report that declares the value of insurable plants in accordance with section 6.

Plant price schedule. A schedule of insurable plant prices published by FCIC 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.

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

Practice value. The full value of all insurable plants in each basic unit on your plant inventory value report including any report that increases the value of your insurable plant inventory. This will be used to determine the amount of insurance under this policy.

Price election. The allowable percentage, as specified in the actuarial documents, of the prices shown in the plant price schedule that you elect and that is used to determine the amount of insurance and any indemnity.

Standard nursery containers. Rigid containers not less than 3 inches in diameter at the widest point of the container interior and that are appropriate in size and have drainage holes appropriate for the plant. In-ground fabric bags, trays, cellpacks with individual cells less than 3 inches in diameter at the widest point of the container interior, and burlap are not considered standard nursery containers under these Crop Provisions.

Stock plants. Plants used solely for propagation during the insurance period.

Under report factor. The factor which adjusts your indemnity for underreporting of inventory values. The factor is always used in determining any indemnity. For each practice, the under report factor is the lesser of: (a) 1.000 or; (b) the sum of all practice values reported on all plant inventory value reports, including any peak inventory value reports during the coverage term of the Peak Inventory Endorsement minus the total of all previous losses, as adjusted by any previous under report factor, divided by field market value C.

2. Unit Division

(a) In lieu of the definition of ''basic unit'' contained in section 1 of the Basic Provisions, a basic unit consists of all insurable plants in which you have a share in the county for each practice for which a separate rate is established in the actuarial documents. Although the basic unit may be divided into optional units in accordance with sections 2(b) and 2(c), you will still be considered to have a basic unit that will be used to establish the amount of insurance, crop year deductible, under report factor, premium, and the total amount of indemnity payable under this policy.

(b) In lieu of the optional unit provisions in the Basic Provisions, if you elect either limited or additional levels of coverage, for an additional premium, inventory that would otherwise be one basic unit may be divided into optional units by plant type as specified in section 2(c). If you elect optional units, your amount of insurance will be divided among optional units in relation to the actual value of plants in each optional unit. If, at the time of loss, the aggregate value of the plants in all your optional units exceeds your practice value, you will be subject to the under report factor provisions.

(c) Plant Types contained on the eligible plant list.

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

(d) You must elect either basic units or optional units.

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

(a) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(b) In addition to the requirements of section 3 of the Basic Provisions, you must select one price election for all plants, regardless of type, insured under this policy.

(c) Your amount of insurance will be reduced by the amount of any indemnity paid under this policy. For losses occurring when a Peak Inventory Endorsement is in effect, to determine the amount of insurance remaining after the loss you must subtract the amount of the indemnity from the peak amount of insurance, then subtract any remaining amount of indemnity from the amount of insurance.

(d) If you restock your nursery plant inventory, you may increase your amount of insurance in accordance with section 6(f).

4. Contract Changes

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

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are September 30 preceding the crop year.

6. Plant Inventory Value Report

(a) Section 6 of the Basic Provisions is not applicable.

(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. If you do not submit a plant inventory value report by September 1, your policy will continue using the reported inventory values in effect as of August 31.

(c) The plant inventory value report must include all growing locations, the practice value, 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 in the amount of detail we require, and your ability to properly obtain and maintain nursery stock. For catastrophic level policies only, you must report your previous plant sales on the plant inventory value report. You may be required to provide documentation to support such sales.

(d) Your plant inventory value report, including any revised report, and your peak inventory value report will be used to determine your premium and amount of insurance.

(e) Your plant inventory value report must reflect your insurable nursery plant inventory value according to prices contained in the plant price schedule. In no instance will we be liable for plant values greater than those contained in the plant price schedule.

(f) You may revise your plant inventory value report to increase the reported inventory value. Any revision must be made in writing before May 31st of the crop year. We may inspect the inventory. 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.

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

(h) For catastrophic insurance coverage only: (1) Your plant inventory value report for container grown nursery cannot exceed the lesser of the actual value from section 6(e) or 150 percent of your previous year's sales of container grown nursery; (2) Your plant inventory value report for field grown nursery cannot exceed the lesser of the actual value from section 6(e) or 250 percent of your previous years' sale of field grown nursery; and if the above restrictions cause you to under report the value of your inventory, you may request a written agreement to waive this restriction.

7. Premium

(a) In lieu of section 7(a) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate and by the premium adjustment factors listed on the actuarial documents that may apply.

(b) In addition to the provisions in section 7 of the Basic Provisions, the premium will be adjusted for partial crop years. Premium will be charged for the entire month for any calendar month during which any amount of coverage is provided under these provisions or the peak inventory endorsement.

(c) Additional premium from an increase in the plant inventory value report is due and payable when the revised plant inventory value report is accepted by us.

8. Insured Plants

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the insured nursery plant inventory will be all the nursery plants in the county that:

(a) Are shown on the Eligible Plant List and meet all the requirements for insurability (plant types, species and cultivars not insurable under the eligible plant list may be insured by written agreement, subject to FCIC's determination that the proper storage requirements and an accurate insurable price for the plant can be determined, and provided all other requirements, such as plant and container size, are met);

(b) Are determined by us to be acceptable;

(c) Are grown in a county for which a premium rate is provided in the actuarial documents;

(d) Are grown in a nursery inspected by us and determined to be acceptable;

(e) Are irrigated unless otherwise provided by the Special Provisions (You must have adequate irrigation equipment and water to irrigate all insurable nursery plants at the time coverage begins and throughout the insurance period);

(f) Are grown in accordance with the production practices for which premium rates have been established;

(g) Are grown in an appropriate medium;

(h) Are not grown for sale as Christmas trees;

(i) Are not stock plants; and

(j) Produce edible fruits or nuts provided the fruit or nuts are not intended for harvest while the plant is located in the nursery.

9. Insurance Period

(a) In lieu of the provisions of section 11 of the Basic Provision: (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 that your inventory is not acceptable; (2) For subsequent crop years, the insurance period begins at 12:01 a.m. each October 1st; (3) No application for insurance for any current crop year will be accepted after May 31st of the crop year; (4) If you apply for coverage after May 31st, coverage will not begin prior to October 1st; and (5) For the 1999 crop year only, if you insured your nursery under 7 CFR 457.114 and you elect to cancel such policy by November 30, 1998, and obtain insurance under these Crop Provisions by November 30, 1998, by simultaneous cancellation and application, and if you select the same coverage level, the 30 day delay in coverage will not apply to your container grown nursery crop, and coverage for your container grown nursery crop will begin on the date of application. If you change coverage levels, the 30 day delay in coverage on your container grown nursery crop specified in section 9(a)(1) will apply and coverage under 7 CFR 457.114 will continue until coverage under this policy begins.

(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; or

(4) 11:59 p.m. on September 30.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided for unavoidable damage caused only by the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions, except as specified in section 10(b) or the Special Provisions;

(2) Fire, provided weeds and undergrowth in the vicinity of the plants or buildings on your insured site are controlled by chemical or mechanical means;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of the irrigation water supply due to a cause of loss specified in sections 10(a)(1) through (5) that occurs within the insurance period; or

(7) Delay in marketability of the plants, if such delay results in a reduction in the value of the plants, due to a cause of loss specified in section 10(a)(1) through (6) that occurs within the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we do not insure against any loss caused by:

(1) Disease or insect infestation, unless:

(i) A disease or insect infestation occurs for which no effective control measure exists; or

(ii) Coverage is specifically provided by the Special Provisions.

(2) A failure of, or a reduction in, the power supply, unless such failure or reduction is due to an insurable cause of loss specified in section 10(a);

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Cold temperatures, if cold protection is required in the eligible plant list, unless:

(i) You have installed adequate cold protection equipment or facilities and 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 to keep the insured plants from sustaining cold damage;

(5) Collapse or failure of buildings or structures, unless the damage to the building or structures results from a cause of loss specified in section 10(a); or

(6) Failure of plants to grow to an expected size due to drought.

11. Duties in the Event of Damage or Loss

(a) In addition to your duties contained in section 14 of the Basic Provisions,

(1) You must obtain our written consent prior to:

(i) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(ii) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plants.

(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.

(b) Failure to obtain our written consent as required by section 11(a)(1) will result in the denial of your claim.

12. Settlement of Claim

We will determine indemnities for any unit as follows:

(a) Determine the under report factor for the basic unit;

(b) Determine the occurrence deductible;

(c) Subtract field market value B from field market value A;

(d) Multiply the result of 12(c) by the under report factor;

(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 of section 12(g), your indemnity equals the result of section 12(e), multiplied by your price election, and multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance including any peak amount of insurance during the coverage term of the peak inventory endorsement.

13. Late and Prevented Planting

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

14. Written Agreements

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

(b) In addition to the requirements of section 18 of the Basic Provisions any written agreement is valid only until the end of the insurance period; and

(c) In lieu of section 18(e) of the Basic Provisions, an application for a written agreement submitted after the date of application for the initial year and the cancellation date for all subsequent crop years may be approved if you demonstrate your physical inability to have applied timely and, after physical examination of the nursery plant inventory, we determine the inventory will be marketable at the value shown on the plant value inventory report.

15. Examples

Single Unit Example

Assume you have a 100 percent share and the plant inventory value reported by you is $100,000, your coverage level is 75 percent, and your price election is 75 percent. Your amount of insurance is $56,250 ($100,000 × .75 × .75). At the time of loss, field market value A is $125,000, field market value B is $80,000, and field market value C is $125,000. The under report factor is .80 ($100,000 divided by $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000) and the occurrence deductible is $25,000 (.25 × $125,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under report factor
$100,000 × $125,000 = .80;
Step (2) Field market value A minus field market value B
$125,000 × $80,000 = $45,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$45,000 × .80 = $36,000;
Step (4) Result of step 3 minus the occurrence deductible
$36,000 − $25,000 = $11,000;
Step (5) Result of step 4 multiplied by your price election
$11,000 × .75 = $8,250;
Step (6) Result of step 5 multiplied by your share
$8,250 × 1.000 = $8,250 indemnity payment.

Peak Inventory Report Example

Assume you have a second loss on the same basic unit. Your amount of insurance has been reduced by subtracting your previous indemnity payment or $8,250 from your amount of insurance ($56,250 − $8,250 = $48,000). 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 times your price election ($60,000 × .75 × .75 = $33,750). The combined amount of insurance for the coverage term of the peak endorsement is $48,000 + $33,750 = $81,750. Your crop year deductible is increased by $15,000 ($60,000 × .25). At the time of loss, field market value A is $124,000, field market value B is $58,000, and field market value C is $124,000. The under report factor is 1.00 [($160,000 − $36,000) ÷ $124,000]. The crop year deductible is $15,000 (.25 × $60,000) and the occurrence deductible is $15,000 (the lesser of field market value A × .25 or the crop year deductible). Your indemnity would be calculated as follows:

Step (1) Determine the under report factor
($160,000 − $36,000) ÷ $124,000 = 1.00;
Step (2) Field market value A minus field market value B
$124,000 − $58,000 = $66,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$66,000 × 1.00 = $66,000;
Step (4) Result of step 3 minus the occurrence deductible
$66,000 − $15,000 = $51,000;
Step (5) Result of step 4 multiplied by your price election
$51,000 × .75 = $38,250;
Step (6) Result of step 5 multiplied by your share
$38,250 × 1.000 = $38,250 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.
$48,000 − ($38,250 − $33,750) =
$48,000 − $4,500 = $43,500

Multiple Unit Multiple Loss Example

Assume you have a 100 percent share and the plant inventory value reported by you is $100,000, your coverage level is 75 percent, and your price election is 75 percent. You have elected optional units and have two optional units, unit 1 and unit 2. Your amount of insurance is $56,250 ($100,000 × .75 × .75). You have a loss on unit 1 and no loss on unit 2. At the time of loss, field market value A on unit 1 is $60,000, field market value B on unit 1 is $18,000, and field market value C is $125,000. The under report factor is .80 ($100,000 ÷ $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000) and the occurrence deductible is $12,000 (.25 × $60,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under report factor
$100,000 ÷ $125,000 = .80;
Step (2) Field market value A minus field market value B
$60,000 − $18,000 = $42,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$42,000 × .80 = $33,600;
Step (4) Result of step 3 minus the occurrence deductible
$33,600 − $12,000 = $21,600;
Step (5) Result of step 4 multiplied by your price election
$21,600 × .75 = $16,200;
Step (6) Result of step 5 multiplied by your share
$16,200 × 1.000 = $16,200 indemnity payment.

Your crop year deductible is reduced to $13,000 ($25,000 − $12,000). Your amount of insurance is reduced to $40,050 ($56,250 − $16,200). You do not restock unit 1 after the first loss. Values on unit 2 do not change from the those measured at the time of the loss on unit 1. Assume you have a second loss during the crop year but this time on unit 2. Field market value A on unit 2 is $65,000, Field market value B on unit 2 is $ 0.00 and field market value C on the basic unit is $83,000. Your loss would be determined as follows:

Step (1) Determine the under report factor
$100,000 ÷ $125,000 = .80;
Step (2) Field market value A minus field market value B
$65,000 − $0.00 = $65,000;
Step (3) Result of step 2 multiplied by the under report factor (step 1)
$65,000 × .80 = $52,000;
Step (4) Result of step 3 minus the occurrence deductible
$52,000 − $13,000 = $39,000;
Step (5) Result of step 4 multiplied by your price election
$39,000 × .75 = $29,250;
Step (6) Result of step 5 multiplied by your share
$29,250 × 1.000 = $29,250 indemnity payment.

7. Section 457.163 is added as follows:

§ 457.163 Nursery peak inventory endorsement.

Nursery Crop Insurance

Peak Inventory Endorsement

This endorsement is not continuous and must be purchased for each crop year to be effective for that crop year.

In return for payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Nursery Crop Insurance Provisions, subject to the terms and conditions described herein.

1. Definitions.

Coverage commencement date. The later of the date you declare as the beginning of the coverage or 30 days after a properly completed peak inventory value report is received by us.

Coverage term. A period of time that begins on the coverage commencement date and ends on the coverage termination date.

Coverage termination date. The date you declare that the peak amount of insurance will cease. This date cannot be after the end of the crop year.

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

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

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

2. Eligibility

(a) You must have insurance under the Nursery Crop Insurance Provision, 7 CFR 457.162, in effect for the crop year that this endorsement applies;

(b) You must have elected either the limited or additional level of coverage.

(c) You must submit a peak inventory value report which will serve as the application for coverage under this endorsement. We may reject the peak inventory value report if all requirements in this endorsement and the Nursery Crop Insurance Provisions are not met.

(d) You may purchase no more than two Peak Inventory Endorsements for each practice during the crop year unless you have suffered insured losses and have restocked your nursery.

3. Coverage

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

(b) Except as provided herein, this endorsement does not change, amend or otherwise modify any other provision of your Nursery Crop Insurance Policy.

4. Peak Insurance Period

Coverage begins at 12:01 a.m. on the coverage commencement date and ends at 11:59 p.m. on the coverage termination date.

5. Premium

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate proration factor shown in the actuarial documents, and by the coverage term.

(b) The premium for this endorsement is due and payable in accordance with section 7 of the Nursery Crop Insurance Provisions.

6. Reporting Requirements

In addition to the reporting requirements of section 6 of the Nursery Crop Insurance Provisions, you must submit a peak inventory value report on our form.

7. Liability Limit

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

Signed in Washington, DC, on September 18, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–25466 Filed 9–23–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–116–AD; Amendment 39–10784; AD 98–20–17]

RIN 2120–AA64

Airworthiness Directives; SAFT America Inc. Part Number (P/N) 021929–000 (McDonnell Douglas P/N 43BO34LB02) and P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) Nickel Cadmium Batteries

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SAFT America Inc. P/N 021929–000 (McDonnell Douglas P/N 43BO34LB02) and P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) nickel cadmium batteries that are installed on aircraft. This AD requires replacing all battery terminal screws, verifying that the battery contains design specification cells, and replacing the cells if the battery contains non-design specification cells. This AD is the result of an incident where the cell screws on one of the affected batteries were exposed to chloride, which caused the heads of some fasteners to shear off and eventually resulted in the battery exploding. The actions specified by this AD are intended to prevent such an occurrence, which could result in loss of emergency power to electrical flight components or other emergency power systems required in the event of loss of the aircraft primary power source.

DATES: Effective November 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SAFT America Inc., 711 Industrial Boulevard, Valdosta, Georgia 31601; telephone: (912) 245–2820; facsimile: (912) 245–2827. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–116–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6069; facsimile: (770) 703 6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to aircraft that have a certain SAFT America Inc. P/N 021929–000 (McDonnell Douglas P/N 43BO34LB02) or P/N 021904–000 (McDonnell Douglas P/N 43BO34LB03) nickel cadmium battery installed was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1998 (63 FR 10156). The NPRM proposed to require replacing all battery terminal screws, verifying that the battery contains design specification cells, and replacing the cells if the battery contains non-design specification cells. Accomplishment of the proposed action as specified in the NPRM would be in accordance with SAFT Aviation Batteries Service Bulletin Document No. A00027, Rev F, dated January 15, 1998.

The NPRM was the result of an incident where the cell screws on one of the affected batteries were exposed to chloride, which caused the heads of some fasteners to shear off and