

(2) One comment received from an FCIC Regional Service Office requested that insurance be allowed to attach to plants that produce edible berries, fruits, or nuts due to numerous requests to insure such plants.

Response: FCIC disagrees with these comments. These plants are primarily hardwoods with tap roots. The roots are usually severed or otherwise constricted and stressed when the tree is placed into a container. These trees are usually grafted as well. When stressed, disease can more easily attack these trees through the roots or the graft. Nursery operators cannot assess the quality of the merchandise and may not be aware of the tree condition if the trees are purchased from a supplier, nor can the insurer who accepts the risk. FCIC will study the feasibility of providing insurance on these types of plants for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to amend these provisions at this time.

Comment: One comment received from a national trade organization for the nursery industry questioned the reasoning for and disagreed with the proposed clarification that stock plants used for reproduction, growing cuttings, air layering or propagating will not be insured.

Response: The intent of the nursery crop insurance policy is to provide coverage for nursery plants that are grown to be sold as entire plants. Premium rates have been established on this basis. Therefore, FCIC does not believe that it is necessary to amend subsection 8.(h).

Comment: One comment from a national trade organization for the nursery industry expressed concern regarding the requirement that the insured must report monthly market values of nursery inventory. The organization perceived this as excessively burdensome and, thus, a strong disincentive to the purchase of crop insurance.

Response: FCIC agrees that this requirement is time consuming and costly for all parties. However, since indemnity payments are based on the monthly market values, the insured must continue to provide the reports until an alternative method is derived. FCIC will study alternative methods to offer nursery insurance coverage that may eliminate this requirement. Therefore, FCIC does not believe that it is necessary to delay implementation of these provisions at this time.

In addition to the changes indicated in the responses to comments, FCIC has determined that:

1. Subsections 1. (d), (e), (f), and (i), subsection 7.(a) paragraph (3),

subsection 7.(a) paragraph (3), and subsection 12.(a) paragraph (1)(ii) reference the 10% reduced valuation due to the comment above regarding subsection 1.(a). FCIC has amended these provisions accordingly.

2. Subsection 1. (h) and (n), definitions of "Largest dimension" and "Standard nursery containers" is amended to clarify that standard nursery containers must be at least three (3) inches across the largest dimension at the top of the container. This will be consistent with the nursery industry definition of the largest dimension and standard nursery containers.

3. Section 6 is amended to: (1) Allow an insured to revise the Nursery Plant Inventory Summary after the sales closing date to add plants not listed on the Nursery Plant Listing, if the insured requested a written agreement to insure such plants by the sales closing date and it has been offered and accepted; (2) allow the insured to revise the Nursery Plant Inventory Summary to correct or change the value of the insurable inventory if a new plant species is being added which was not originally reported on the nursery plant inventory summary without regard to the 10%/ \$25,000 limitation; and (3) remove the restriction requiring that the increase in inventory value must have been due to a quantity change.

4. Subsection 9.(b) is amended to clarify that the date of final adjustment of a loss on the unit, when the total indemnities paid for the unit equal the amount of insurance for that unit is one of the events that ends the insurance period.

Accordingly, the rule, "Common Crop Insurance Regulations; Nursery Crop Insurance Provisions and Nursery Frost, Freeze, and Cold Damage Exclusion Option" published at 60 FR 5339 as revised and set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 457

Crop insurance, nursery crop.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Common Crop Insurance Regulations (7 CFR part 457), effective for the 1996 and succeeding crop years, to read as follows:

PART 457—[AMENDED]

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

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

2. 7 CFR part 457 is amended by adding §§ 457.114 and 457.115 to read as follows:

§ 457.114 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

United States Department of Agriculture Federal Crop Insurance Corporation

Nursery Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Amount of insurance*—The result of multiplying the highest monthly market value reported on the nursery plant inventory summary (including inventory reported by you and accepted by us on a revised nursery plant inventory summary) by .9, multiplied by the percentage for the coverage level you elect.

(b) *Brownout*—A reduction in electric power that affects the unit.

(c) *Crop year*—The 12 month period beginning October 1 and extending through September 30 of the next calendar year, designated by the year in which it ends. (The 1996 crop year begins October 1, 1995, and ends September 30, 1996).

(d) *Crop year loss deductible*—The value calculated by multiplying the highest monthly market value reported on the nursery plant inventory summary by .9 and subtracting from this product the amount of insurance.

(e) *Field market value A*—Ninety percent (90%) of the wholesale market value for the insured plants in the unit immediately prior to the occurrence of the loss.

(f) *Field market value B*—Ninety percent (90%) of the wholesale market value remaining for the insurable plants in the unit immediately following the occurrence of the loss as determined by our appraisal conducted as soon as reasonably possible after the loss is reported.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

(h) *Largest dimension*—The distance measured at the top of the standard nursery container from one side directly across to the opposite at the widest point.

(i) *Monthly loss deductible*—The smaller of: (1) The highest monthly market value reported on the nursery plant inventory summary multiplied by .9; or (2) field market value A; multiplied by the number derived by subtracting the coverage level percent from one hundred percent (100%), not to exceed the crop year loss deductible.