INFORMATIONAL MEMORANDUM IS-07-009

United States Department of Agriculture

Risk Management Agency

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TO: All Approved Insurance Providers
All Risk Management Agency Field Offices
All Other Interested Parties

FROM: William J. Murphy */s/ William J. Murphy* *July 2, 2007*
Deputy Administrator for Insurance Services

SUBJECT: Nursery Crop Marketability

In accordance with the Standard Reinsurance Agreement (SRA) the Risk Management Agency (RMA) participates in certain large claim determinations. Following several nursery large claim reviews in the State of Tennessee, there appears to be some confusion regarding the definition of "marketable" and how it relates to the value of insured nursery stock damaged by insured causes of loss. This memorandum provides clarification and interpretation of the existing Nursery Crop Provisions, 7 C.F.R. §457.162, and loss adjustment procedures. It does not change, modify, or waive, any policy provisions or procedures.

Section 10(b) states "Insurance is also provided against the following if due to a cause of loss specified in section 10(a) that occurs within the insurance period:

(1) A loss in plant values because of an inability to market such plants, provided such plants would have been marketed during the crop year (e.g., poinsettias that are not marketable during their usual and recognized marketing period of November 1st through December 25th);"

Certain nursery growers, loss adjustment staff and consultants believe section 10(b) authorizes policyholder's to receive 100 percent of the value of the crop if policyholder's are unable to market their plants in their primary market and at the time they normally market the plant. However, this is not the case.

Under section 508(a) of the Federal Crop Insurance Act (Act), section 12 of the Common Crop Insurance Policy Basic Provisions, 7 C.F.R. §457.8 and section 10 of the Nursery Crop Provisions, insurance is only provided for unavoidable loss of production due to a natural disaster. Thus, the inability to market the crop must itself be due to an insured cause of loss, as described in section 10(a). The simple inability to market in and of itself is not a separate and distinct cause of loss.

Section 1 of the Nursery Crop Provisions defines “marketable” as “Of a condition that it may be offered for sale in the market.” Some have interpreted “the market” to mean the policyholder’s primary market, but this is not correct. The term “the market” does not refer to any particular market. If the definition was intended to refer to only the policyholder’s primary market, it would state “your market,” since this possessive pronoun is used throughout the policy when specifically referring to something of the policyholder’s (e.g., “your plant inventory value,” “your catalog,” “your plant values,” etc.). Therefore, the term “the market” must be given its common meaning, which means any place where nursery stock can be sold. This would include the policyholder’s primary market, or any other market such as a discount market.

Therefore, it is not an insured cause of loss simply because the damaged plants cannot be sold when the policyholder normally sells the plants, or is unable to sell them to the policyholder’s primary customer. To be consistent with the constraints of the Act, section 10(b) of the Nursery Crop Provisions must be interpreted to mean there is only an insured cause of loss if the policyholder is unable to market plants damaged due to an insured cause of loss to anyone.

The example in the Nursery Crop Provisions is illustrative. If the policyholder grows poinsettias that are only marketed from November 1 through December 25 and an insured cause of loss damages the poinsettias to the extent they cannot be marketed at all during that limited period, section 10(b) applies and it is a covered cause of loss. However, if the damage causes the policyholder to be unable to market the poinsettias to the policyholder’s primary customers, but the poinsettias can be marketed to other customers during the November 1 – December 25 marketing window, the inability to market to the primary customers is not an insured cause of loss.

In addition, if the policyholder markets a certain plant during a certain period but there are other customers who purchase that type of plant at other times during the crop year, failure to market the plants during that period is not an insurable cause of loss. For example, the policyholder is growing evergreen shrubs and the policyholder has a contract to sell the shrubs to the city each year in November, but an insured cause of loss damages the shrubs so they are not ready for sale in November and the city purchases the shrubs from another nursery. If other customers purchase that type of shrub at other times of the crop year, then the failure to market the shrubs to the city in November is not an insurable cause of loss even if other customers would pay less for the shrubs.

This does not mean the policyholder does not receive compensation if damage to the plants was caused by an insured cause of loss that results in a lower price in the marketplace. For example, if the poinsettias are insured for $15 a plant and an insured cause of loss causes damage such that the poinsettias are worth $10 in a market, the policyholder may be compensated for such loss in value in accordance with section 12 of the Nursery Crop Provisions and FCIC issued loss adjustment procedures.

In addition, RMA is aware concerns exist because there are some areas where customers are not purchasing or are purchasing fewer landscaping plants because of water restrictions. The customers' failure to purchase nursery stock is not an insured cause of loss. Section 10(c) of the Nursery Crop Provisions states:

> "In addition to the causes of loss excluded in sections 12(a) and (c) through (f) of the Basic Provisions, we do not insure against any loss caused by:
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> * * * * *
>
> (2) The inability to market the nursery plants as a result of:
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> (i) The refusal of a buyer to accept production;"

As stated above, the policy only covers damage to the plant due to insured causes of loss. If the plants are not damaged, there is no covered loss even if no one is willing to purchase the plants.

DISPOSAL DATE:

This memorandum expires when incorporated into 2009 Nursery Loss Adjustment Standards Handbook, FCIC 25750.