Environmental Assessment nor an Environmental Impact Statement is needed.

By separate rule, FCIC will amend 7 CFR part 406 to restrict the crop years of application to those prior to the crop year for which this rule will be effective. FCIC will terminate the provisions of the present policy at the end of the crop year and later remove that part.

On Friday, January 27, 1995, FCIC published a notice of proposed rulemaking in the **Federal Register** at 60 FR 5339 proposing to revise the Common Crop Insurance Regulations by adding new provisions for nursery crop insurance.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: One comment received from an insurance company disagreed with using the insured's wholesale price list in determining the insurance coverage rather than using the projected

market price because:

(1) The proposed rule ties price levels (i.e., "monthly market value") to growers' wholesale price lists, while the Federal Crop Insurance Reform Act of 1994 (Act) ties price levels to projected market prices. Wholesale price lists represent offers; however, market prices represent offers and acceptance. It was questioned whether FCIC had the authority to determine that wholesale price lists are the "projected market prices" when: (a) FCIC has never seen and never validated such price lists; (b) they are not the product of independent economic forces or analysis; and (c) they are the estimates of insureds who have an economic interest in inflating the prices on their wholesale price lists. The company believes that allowing each grower to define his or her own market price by quoting an offering price invites fraud; and

(2) The Act requires FCIC, not individual growers, to determine "projected market price". The company acknowledged that FCIC has the authority to determine that a grower's wholesale price list is the "projected market price" but questions whether this is a lawful exercise of that authority. It was recommended that FCIC base the price level for nursery crops on the actual market price at the time of harvest (as determined by the Corporation).

Response: FCIC believes using the growers' wholesale price lists to establish the projected market prices does not violate the Act because the Act authorizes the Corporation to determine the wholesale market price as the

projected market price. Due to numerous varieties of nursery plants eligible for insurance, FCIC believes that it is impractical to establish a price for each insured plant in the various states prior to the crop year. FCIC will determine whether the wholesale market price of the plant is reasonable before accepting it as the projected market price. The Federal Crop Insurance Corporation will investigate options on how nursery prices should be established for the 1997 crop year. Therefore, FCIC does not believe that it is necessary to change these provisions at this time.

Comment: One comment received from an insurance company disagreed with the elimination of the 10 percent reduced valuation in subsection 1.(a) (definition of "Amount of insurance"). The company stated that the 10 percent value reduction must remain in the policy to account for salvage valuation because many damaged plants can be restored to marketability or the Standard Reinsurance Agreement should be amended to reimburse insurance companies for this change. A concern was raised that deletion of the 10 percent reduction would result in increased premiums to insureds.

Response: The 10 percent reduction was originally incorporated to eliminate costs for packing, shipping, sales commissions and other expenses that would not be incurred due to the loss. The proposal to eliminate this 10 percent reduction was made to offset the expense of disposing of the destroyed inventory. However, eliminating the 10 percent factor would increase premium by 10% to cover the additional liability. No data is available at this time to determine if the costs of inventory disposal approximates the amount of 10%. Therefore, FCIC agrees that the 10 percent reduced valuation should remain in the nursery provisions and has amended the provisions accordingly

Comment: One comment received from an insurance company requested the term "Annual loss deductible" contained in subsection 1.(b) be changed to "Crop year loss deductible".

Response: FCIC agrees with the comment and has adopted this change.

Comment: One comment received from an insurance company suggested that the word "unit" be removed from the definition of "Field market value A" in subsection 1.(e) and from the definition of "Field market value B" in subsection 1.(f) because it is redundant and invites the unintended interpretation that field market value A and field market value B include both insured and uninsured plants.

Response: FCIC agrees with this comment. FCIC has added "insurable plants" or "insured plants" to the term to clarify these provisions.

Comment: One comment received from an insurance company suggested the definition of "Standard nursery containers" contained in subsection 1.(n) be changed to read as follows: "Rigid containers not less than three (3) inches across the smallest dimension which are commercially sold to nurseries, and for the plant contained, are appropriate in size with the proper drainage holes and used in conjunction with an appropriate growing medium". Justification for this change was that too often growers permit plants to become root bound or use containers with drainage holes that are too high or too low for the plant or use an inappropriate growing medium. The company stated that FCIC should make clear that insurance does not attach unless all of these conditions are satisfied.

Response: FCIC agrees with the comment and has modified the provisions with language similar to that recommended.

Comment: One comment received from a national trade organization for the nursery industry strongly disagreed with the proposed definition of "Standard Nursery Containers" which excludes trays and cellpacks. This organization stated that trays and cell packs are indeed standard containers for a large segment of the nursery industry and that many trays, flats, and cell packs are larger than three inches across the smallest dimension. FCIC was urged to reconsider the proposed definition to explicitly incorporate flats, trays, and cell packs.

Response: FCIC disagrees with this comment. These types of containers are not insurable under the nursery policy. The nursery policy is based on plants grown in standard nursery containers not less than three (3) inches across the largest dimension at the top of the container. FCIC will study the feasibility of insuring nursery plants grown in other types of containers 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 an insurance company suggested that subsection 6.(d) be amended to specify that insurers have no duty or contractual obligation to consent to a revision of the nursery plant inventory summary. The company also recommended that paragraphs 6.(d)(1) and 6.(d)(2) be deleted. The company stated that an inspection should be made before insurance attaches on any proposed increase in inventory and that