because an insurer has no duty to accept a proposed increase, it should have no duty to inspect it. The company stated that the policy should state that a refusal to inspect constitutes a refusal to accept a proposed increase.

Response: FCIC disagrees with the comment. The proposed provisions do not require an insurer to make an inspection in some cases. However, an inspection is necessary for insurance to attach if the conditions of paragraphs 6(f)(1) and 6(f)(2) apply. FCIC believes removing paragraphs 6(f)(1) and 6(f)(2) would require the insured to request an inspection for any inventory increase. Therefore, FCIC does not believe that it is necessary to amend these provisions.

Comment: One comment received from an insurance company stated that the proposed nursery regulations do not contain provisions for the inclusion of an amount for operating and administrative expenses in the calculation of premium and, therefore, are in violation of the Federal Crop Insurance Corporation Reform Act of 1994.

Response: FCIC disagrees with this comment. All information concerning subsidies, including the producer premium subsidy and administrative expenses, is contained in the actuarial table. Therefore, FCIC does not believe that it is necessary to amend these provisions.

Comment: One comment received from an FCIC Regional Service Office suggested that subsection 8.(a), paragraph (4) be amended to read as follows: "Are grown in standard nursery containers (not planted in the ground), at least three (3) inches across the smallest dimension unless provided for on the actuarial table." Justification for this change was that many requests to insure trays or "flatted stock" containers with multiple plantings have been received. To alleviate the time and personnel needed to process the number of written agreements, the actuarial table could authorize such coverage.

Response: FCIC disagrees with this comment. The nursery policy does not allow insuring trays or "flatted stock" containers with multiple plantings. Only plants grown in standard nursery containers that are at least three (3) inches across the largest dimension at the top of the container are insurable. FCIC will study the feasibility of providing insurance coverage for nursery plants not grown in standard nursery containers for the 1997 crop year. Therefore, FCIC has amended the proposed provisions to delete the availability of written agreements for such plants.

Comment: One comment from a national trade organization for the nursery industry expressed concern that as many of 5,000 or more plant species are commercially produced by nursery growers, yet the Nursery Eligible Plant Listing for the 1994 crop year contained only 494 species. The organization urged FCIC to expand the Nursery Eligible Plant Listing as soon as possible and stated that until the listing is more inclusive, the nursery program will remain unattractive to a sizable segment of the industry.

Response: The Nursery Eligible Plant Listing was amended for the 1995 crop year and will be amended for the 1996 crop year to include additional plant species. FCIC is continuing to work with nursery experts to evaluate additional plant species that may be added to this listing.

Comment: One comment was received from an insurance company regarding paragraphs 10.(a) (3) and (4) which specify that insects and plant disease are insured causes of loss. The company stated that: (a) the only insect and plant disease that should be insured against are those determined by a state department of agriculture or an accredited agriculture college in the state to be an unprecedented affliction in that state to that plant and for which no effective control is available, because most insect and plant-disease losses are the result of poor nursery practices; and (b) paragraphs 10.(a) (3) and (4) should make it clear that policyholders have an obligation to keep all receipts for purchases of sprays and maintain spraying records.

Response: FCIC disagrees with the comment. The crop provisions already exclude damage due to insufficient or improper application of pest and disease control measures. The Common Crop Insurance Policy Basic Provisions, to which the Nursery Crop Provisions attach, exclude losses due to failure to follow recognized good practices, and also require policyholders to maintain records. Therefore, FCIC does not believe that it is necessary to amend these provisions.

Comment: One comment received from an insurance company disagreed with providing coverage specified in paragraph 10.(a)(9) for failure or breakdown of frost/freeze protection equipment or facilities due to direct damage to such equipment or facilities from an insurable cause of loss. The company questioned how the loss adjuster is to determine: that "direct damage" caused the loss if protection equipment or facilities were not properly maintained; whether the proximate cause of the loss was from

owner negligence or insurable causes, or if from both, how the adjuster makes allowance for contributory negligence; and that the plants are damaged within 72 hours after the failure of the equipment or facilities. For the reasons stated above, it was recommended that paragraph 10.(a)(9) be deleted in its entirety and paragraph 10.(b)(5) be amended to delete the clause "unless due to an insured cause of loss."

Response: FCIC disagrees with this comment. The intent of the Nursery Crop Provisions is to protect the producer from unavoidable causes of loss. Therefore, failure or breakdown of the frost/freeze protection equipment or facilities due to an unavoidable insurable cause of loss will be covered. It is the loss adjuster's responsibility to determine whether an insurable cause of loss directly caused the damage in accordance with loss adjustment procedure approved by FCIC.

Comment: One comment received from an insurance company stated that because nursery plants are portable, section 11 should require that the insurer's permission to dump be in writing and signed by a loss adjuster and should require the insured to identify, in advance, the location where plants will be dumped and require the insured to keep dumping records.

Response: Section 11 requires the insured to obtain written consent from the insurer prior to destroying, selling or otherwise disposing of any plant inventory that is damaged. Further, the Common Crop Insurance Policy Basic Provisions already require the insured to keep records of the disposition of the crop. FCIC will study and address this issue for the 1997 crop year. Therefore, for the reasons stated, FCIC does not believe that it is necessary to amend these provisions.

Comment: Two comments were received requesting that insurance be allowed to attach to nursery inventory that produce edible berries, fruits, or nuts as follows:

(1) One comment received from a national trade organization for the nursery industry stated that the production and irrigation practices for nursery plants that are produced as entire plants for subsequent sale to others, where the purchaser's intent is to use the plants to produce edible berries, fruits, and nuts for market are similar to the production and irrigation practices for ornamental plant types. The organization strongly urged FCIC to allow insurance coverage for nursery plants that are produced for the wholesale market as entire plants, and not for berry, fruit, or nut sales; and