**National Switch**

We received three comments regarding FNS administration and control of a national switch (Gateway). Two commenters supported the development of a national switch while one commenter opposed it. In accordance with Pub. L. 106–171, the Department employed Phoenix Maximus to examine the feasibility of developing a Federal Gateway for handling interstate food stamp transactions. Although the report did not find technical barriers to having FNS support its own EBT transaction switch, it found that such an undertaking would not be cost effective. The Benton International Study of the interoperability costs of EBT transactions estimates that nationwide interoperability fees would amount to approximately $450,000 annually using private switches. In contrast, Phoenix Maximus estimates that the annual cost of operating a Federal EBT Gateway would be approximately $17 million. Another $2.2 million would be needed for initial implementation costs. Therefore, the Department is convinced that it would not be fiscally prudent to pursue the development of a Federal EBT Gateway at this time. As EBT expands across all States as the prevailing method for issuing food stamp benefits, we will continue to look into ways to make interoperability efficient and cost effective for all parties involved.

**Disposition of Disputes, Error Resolution and Adjustments**

Two commenters raised issues regarding the handling of disputes, error resolution, and adjustments across State lines. One commenter favored a specific reference to the Quest rules while the other commenter favored having FNS take the lead in facilitating standards for error resolution. The Department has chosen to define standards for error resolution within a separate rulemaking body. The EBT Benefit Adjustments Final Rule, published on July 5, 2000 at 65 FR 41321 specifically addresses the process for making retailers or clients whole when a system error occurs.

**List of Subjects in 7 CFR Part 274**

Administrative practice and procedure, Food stamps, Fraud, Grant programs—social programs, Reporting and record keeping requirements, State liabilities.

■ Accordingly, the interim rule amending 7 CFR parts 272 and 274 which was published at 65 FR 49719 on August 15, 2000, as amended by the final rule which was published at 65 FR 59105 on October 4, 2000 is adopted as a final rule with the following changes:

## PART 274—ISSUANCE AND USE OF COUPONS

■ 1. The authority citation for 7 CFR Part 274 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 274.12:

■ a. Paragraph (g)(6)(i) is amended by revising the second sentence; and

■ b. Paragraph (l)(6) is correctly reinstated.

The revision and reinstatement read as follows:

**§ 274.12 Electronic Benefit Transfer issuance system approval standards.**

* * * * *

(g) * * *

(6) * * *

(i) * * * States must provide a means for a client to be able to use their benefits upon relocation. A State agency may convert electronic benefits to paper coupons if a household is relocating to a State that is not interoperable and where electronic benefits are not portable from the household's current State of residence, or assist clients in finding an authorized retail location where out-of-State electronic benefits can be used. * * *

* * * * *

(l) * * *

(6) State agencies may receive one hundred percent federal funding for the costs they incur for switching and settling all food stamp interstate transactions. For purposes of this section, the term ''switching'' means the routing of an interstate transaction that consists of transmitting the details of a transaction electronically recorded through the use of an EBT card in one State to the issuer of the card that is in another State; and the term ''settling'' means movement, and reporting such movement, of funds from an EBT card issuer located in one to a retail food store, or wholesale food concern, that is located in another State, to accomplish an interstate transaction. The total amount of one hundred percent funding available annually is limited to $500,000 nationwide. Once the $500,000 limitation is exceeded, federal financial participation reverts to the standard fifty percent program reimbursement rate and procedure. In order to qualify for this funding, the State agency must:

(i) Adhere to the standard of interoperability and portability adopted by a majority of State agencies for interoperability costs incurred for the period from February 11, 2000 through September 30, 2002;

(ii) Meet standards of interoperability and portability under paragraphs (e) and (h) of this section for costs incurred after September 30, 2002;

(iii) Sign and submit, in each fiscal year for which the State agency requests enhanced funding, an Interoperability Funding Agreement to comply with the administrative procedures established by the Department. The State agency must submit the signed agreement to the Department before the end of the fiscal year in which costs are incurred in order to qualify for payment for that fiscal year, and

(iv) Submit requests for payment on a quarterly basis after the end of the quarter in which interoperability costs are incurred, in accordance with the Department's administrative procedures. Requests for payments shall be due February 15 (for the period October through December), May 15 (January through March), August 15 (April through June), and November 15 (July through September). Requests for payment submitted after the required date for a quarter shall not be considered until the following quarter, when such requests for payments are scheduled to be processed.

* * * * *

Dated: June 17, 2003.

**Eric M. Bost,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 03–15897 Filed 6–24–03; 8:45 am]

BILLING CODE 3410–30–P

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## DEPARTMENT OF AGRICULTURE

## Federal Crop Insurance Corporation

## 7 CFR Parts 400, 407 and 457

**RIN 0563–AB85**

## General Administrative Regulations, Subpart J—Appeal Procedure and Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the General Administrative Regulations; the Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions to make

revisions mandated by the Federal Crop Insurance Act (Act), as amended by the Agricultural Risk Protection Act of 2000 (ARPA), and to require an earlier notice of loss for prevented planting in response to an Office of Inspector General Audit. The changes will apply for the 2004 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2005 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule. FCIC also made conforming amendments to the General Administrative Regulations, that provide the process for informal administrative review of determinations of good farming practices, to make the definition of ''good farming practices'' consistent with the definition contained in the Basic Provisions, and to consolidate all the provisions regarding the informal administrative review process for determinations of good farming practices in a separate section.

**EFFECTIVE DATE:** June 18, 2003.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the Cost-Benefit Analysis, contact Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

## Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

## Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds that changes in the rule will have positive potential benefits for insureds who do not engage in program abuse.

Changes in prevented planting provisions will be beneficial to two groups of producers. One group is made up of those who, under current provisions, would forgo the full prevented planting payment on a first crop in order to plant a second crop. Under the final rule, such producers will receive a reduced prevented planting payment to at least partially compensate for pre-planting costs incurred on the first crop. The second group is made up of producers who change planting decisions and plant a second crop that would not have been planted under current provisions. In taking this action, these individuals will reveal they perceive a positive economic benefit relative to the options offered them by current provisions. Whether payments and costs associated with prevented planting coverage increase or decrease and the magnitude of any such change will depend on the proportion of reduced prevented planting payments made under the final rule that are taken by producers who would have taken a full versus zero payment under current provisions.

Double insurance provisions of the final rule reduce the incentive for program abuse that is perceived to have occurred under current provisions. Earlier notice required from producers who are prevented from planting should also help reduce instances in which insurance providers cannot accurately determine whether insured causes resulted in the loss. Over time, if program abuse is decreased, premium reductions may result. Such reductions would be beneficial to producers who do not abuse the program. However, because the amount of abuse that currently occurs cannot be measured with existing data, immediate rate adjustments for reduction of program abuse are not appropriate. Rather, such adjustments should be made when adequate loss experience is available to support actuarial calculations that satisfy appropriate credibility standards.

Adding provisions to allow coverage for crops produced using an organic farming practice may encourage more producers using this practice to purchase insurance than in the past. Although it is not possible to determine the number of additional producers who may participate, the premium amount charged will be adequate to cover any additional losses and the amount provided to insurance providers for administrative and operating expenses will be as determined under the SRA.

Providing a reconsideration process for determinations regarding good farming practices will reduce costs incurred by insurance providers and insured producers. Prior to this rule, arbitration or judicial review were the mechanisms used to settle disputes regarding the use of good farming practices, and both are significantly more expensive than the reconsideration process that FCIC will perform. Although it is not possible to estimate the savings because the number of cases mediated or litigated in the past is not known, savings to insurance providers and insured producers will clearly result.

Changes to the provisions regarding yield substitution when actual yields fall below 60 percent of the applicable transitional yield should have little impact on overall program costs. It is anticipated that producers will continue to elect to substitute all low yields in a data base even though they are allowed to select individual years. Therefore this change should not affect program costs. Likewise, it is not anticipated many producers will elect to cancel the yield substitution election once they have it. Therefore, new provisions allowing cancellation of the election will have little impact on program costs.

## Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through February 28, 2005.

The following comments were received regarding information collection burden: (1) A commenter stated FCIC estimates it will take producers, a loss adjuster, and an insurance agent an average of one hour to provide the requested information. The commenter believes this is incorrect for the producer, agent, company, and loss adjuster. It believes a more realistic estimate would be at least one hour for each individual listed above; and (2) Another commenter states that while the purpose of the proposed rule is to make changes and clarify existing policy provisions to better meet the needs of the insured and the insurance companies, it believes that the information FCIC collects for use in offering crop insurance coverage, determining program eligibility, establishing a production guarantee, calculating losses qualifying for a payment, and combating fraud, waste, and abuse will most likely result in a substantial increase in the number of burden hours to producers and insurance providers. In addition, it believes that it is critical the rule introduce greater clarity and common sense in the regulations that ultimately define contract terms for crop insurance polices as well as producers' responsibilities. The commenter believes it is imperative the rule be developed without imposing unnecessary, burdensome administrative requirements for crop insurance participants.

Based on the comments received, FCIC has increased the burden that FCIC estimates it will place on respondents for information collection for the entire crop insurance process to 1.1 hours per

respondent for a new estimated total of 1,447,152 hours for 1,310,553 respondents with 4,017,742 responses. The information collection burden is determined based on the average amount of time taken for all crops, all producers, all required and optional notices, etc. However, the large number of producers who do not provide loss notices and do not have claims significantly reduce the average information collection. FCIC strives to limit the information collection burden and implements only those changes required to properly administer the program and keep waste, fraud, and abuse to a minimum.

**GPEA Compliance**

RMA is committed to compliance with the GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

**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 the 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 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. 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. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

*Background*

On September 18, 2002, FCIC published a notice of proposed rulemaking in the **Federal Register** at 67 FR 58912–58933 to amend the General Administrative Regulations, subpart T-Federal Crop Insurance Reform, Insurance Implementation, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations; Basic Provisions to implement program changes mandated by the Act, as amended by ARPA, and make other changes and clarify existing policy provisions to better meet the needs of the insured, effective for the 2003 and succeeding crop years for all crops with a contract change date of November 30, 2002, or later.

Following publication of the proposed rule on September 18, 2002, the public was afforded 30 days to submit written comments and opinions. Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 67 FR 65732 on October 28, 2002, extending the initial 30-day comment period an additional 15 days, until November 12, 2002.

A total of 3,407 comments were received from 209 commenters. The commenters were reinsured companies, attorneys, trade organizations, commodity associations, State agricultural associations, regional agricultural associations, agents, insurance service organizations, universities, producers, USDA agencies, State Departments of Agriculture, grower associations, and other interested parties.

Significant comments were received regarding the provisions related to the implementation of ARPA. However, since these changes are statutorily mandated, FCIC has no choice but to implement these provisions as expeditiously as possible. The provisions mandated by ARPA include good farming practices and the reconsideration process, sustainable farming, organic farming, multiple benefits on the same acreage in the same crop year, prevented planting, yield substitutions, removal of references to limited coverage, and all the related provisions necessary to implement these provisions. Therefore, these changes and all related conforming changes are included in this final rule.

Further, an important program vulnerability was also raised by the Office of Inspector General (OIG) in an audit report related to the notice of loss for prevented planting acreage. Given the significance of this identified problem, FCIC has elected to also include the changes related to this vulnerability and any related conforming changes in this final rule.

A significant number of comments were received that raised issues that were not contemplated by FCIC when it proposed certain changes. These comments pertain to provisions that can generally be categorized as related to program integrity and administrative issues. Given the concerns expressed by the commenters, FCIC needs additional time to adequately consider such comments and take appropriate action. FCIC has determined that it does not have sufficient time to adequately address these comments prior to the contract change date for 2004 crop year fall planted crops.

To avoid delaying the implementation of provisions mandated by ARPA and OIG, FCIC has decided to separate those changes from the other proposed changes for which FCIC needs

additional time and move forward only with the ARPA and OIG changes in this final rule. FCIC has determined that it would impose an undue burden to implement those changes for which it needs additional time to respond to comments in the middle of a crop year. Further, it would also adversely affect those producers who plant both fall and spring planted crops to have different contract terms. All comments received on the proposed provisions that are not included in this final rule will be addressed in a subsequent final rule to be effective for the 2005 crop year.

The comments received that are related to the portions of the proposed rule addressed in this final rule and FCIC's responses are as follows:

*Comment:* A few commenters stated that the Basic Provisions must be clear and unambiguous, and that they also should be revised only in accordance with the best analysis available from the combined experience of program administrators, approved insurance providers and active agricultural producers. The commenters stated that any of the several inclusive processes permitted by law for the material revision of such a fundamental regulation would have been preferable to RMA's unilateral pronouncement. They complain that they have difficulty defending a policy that they did not help develop.

*Response:* Many of the changes that were originally proposed arose from discussions with the insurance companies, producer groups, OIG, the United States Attorney's offices, and other interested parties. However, to utilize the negotiated rulemaking process that the commenter proposes would drastically delay the process and hinder efforts to make meaningful and necessary program changes in a timely manner. The defense of the policy terms is dependent on the language of the policy, not the drafter. Through notice and comment, FCIC permits the insurance providers to have input into the specific language of the policy. Further, 7 CFR part 400, subpart X permits insurance providers and any other interested party to obtain an interpretation of policy provisions.

*Comment:* A commenter urged FCIC to not make any changes in the Basic Provisions at this time.

*Response:* The provisions related to ARPA must be implemented. However, as stated above, FCIC has received such significant comments on other provisions that it is taking the additional time needed to fully evaluate the comments and take appropriate action.

*Comment:* Many commenters requested an extension of the comment period.

*Response:* In response to such comments, FCIC extended the comment period an additional fifteen days.

*Comment:* Many commenters expressed concerns regarding implementation of the rule in the middle of a crop year. They also expressed concerns regarding the legality of making the rule effective upon filing with the **Federal Register**.

*Response:* As stated above, FCIC has elected not to implement the rule in the middle of the crop year. With respect to the effective date, FCIC will be in compliance with the applicable laws.

*Comment:* Many commenters noted that the amount of work required of the insurance companies delivering and servicing these policies will increase significantly from the amount of work currently required. It claims that if more is being required of the companies, they need to be compensated accordingly. Another commenter expressed concerns regarding the increased workloads and program delivery costs.

*Response:* FCIC agrees some additional work will be required to administer the new provisions contained in this final rule. However, most of these changes in this final are statutorily mandated so FCIC has no choice but to implement these provisions. Further, it is also anticipated that companies will realize significant savings as a result of the new limitations on multiple crop benefits on the same acreage, which may also reduce the work the insurance providers must currently devote to adjusting these claims. Further, Congress has placed a cap on the amount of money that insurance providers can receive to pay for their administrative costs. Therefore, FCIC does not have the authority to increase the compensation paid to the insurance providers.

*Comment:* Many general comments were received regarding added program complexity and unclear definitions, terms and conditions.

*Response:* Since no specific provisions were discussed, FCIC is unable to respond directly. However, FCIC did receive similar comments regarding specific provisions and has responded to those concerns below.

*Comment:* A few commenters requested their comments to the Common Crop Insurance Policy, Basic Provisions be considered for the Group Risk Plan (GRP) proposed provisions where applicable.

*Response:* FCIC has considered all the comments to the Common Crop Insurance Policy, Basic Provisions as if they are applicable to the GRP provisions. Where applicable, in response to the comments, FCIC has made the same or similar changes in both the GRP provisions and the Basic Provisions.

*Comment:* A commenter stated the ''first,'' ''second'' and ''double'' crop provisions contained in ARPA should not apply to the GRP policy. It stated that National Agricultural Statistics Service (NASS) records are based on their own criteria, and are consistent from year to year in methodology. The commenter added that, from an administrative standpoint, including this language in the GRP policy removes much of the administrative ease that has been associated with GRP and that administrative ease has been one of GRP's biggest selling points to many insureds.

*Response:* Section 108 of ARPA does not make any distinction between plans of insurance. It simply requires that any loss for a first crop insured under the Act be reduced by 65 percent if a second crop is planted on the same acreage in the same crop year and suffers an insurable loss. Since ARPA does not provide an exception for GRP policies, no change has been made.

*Comment:* A few commenters stated beyond the definition itself, all references to ''good farming practices'' in the GRP policy need to reflect the provisions of section 123 of ARPA. For instance, in § 407.9, section (3)(c)(2), the statement is made that insurance will not be available if good farming practices are not followed, with the unqualified warning that if ''any farming practice is not established or widely used in the area, it may not be considered a good farming practice.'' In this instance, there is not even an attempt to reflect the ARPA provision in question. This sentence is clearly deficient and at odds with the statute and must be changed to comply with section 123 of ARPA.

*Response:* Since the definition of ''good farming practices'' in the GRP policy specifically references both sustainable and organic farming practices as ''good farming practices,'' it is not necessary to repeat these terms wherever ''good farming practices'' is used in this rule. FCIC agrees the reference to ''widely used'' should be removed and has revised section 3(c)(2) accordingly. A similar reference has also been removed from the definition of ''good farming practices.'' These references were removed because ''common usage'' is not a useful measure to determine whether a practice is acceptable. The more accurate measure is whether the

practice is generally recognized as agronomically sound since generally recognized is a judicially determined objective standard.

*Comment:* A few commenters asked if it is intended that organic crops will be insurable under the GRP policy. If so, the commenter questioned whether they will be referred to as ''organic,'' or simply fall under the generic heading of that crop. The commenters states that if they will not receive ''special'' or distinct treatment under GRP, there is no need for separate references to ''organic'' in the GRP policy. The commenters also stated the definition of ''good farming practices'' should be the same in the GRP policy and the Basic Provisions. The commenters also asked that the Corporation include the regulatory sections in 7 CFR part 400, subpart J if it extends or re-opens the comment period on the crop insurance rules.

*Response:* Although organic farming practices will be insured under the GRP policy, the organic crop will be insured using the same NASS yield and expected market price as all other crop practices. Therefore, organic crops are not insured separately from any other type of the same crop. The definitions of ''good farming practices'' have been made consistent to the extent possible in both the GRP policy and the Basic Provisions. The only differences are due to the fact that GRP is not a production based policy. At the time that the comment period for the proposed rule was extended, FCIC did not know that there was an issue regarding the reconsideration process published in 7 CFR part 400, subpart J. However, now that FCIC has considered all the comments, it realizes that amendments are required to subpart J as stated below. Since changes to subpart J were made only in response to comments received, an additional comment period was not required.

*Comment:* Several commenters recommended adding a definition of ''actual production history (APH).'' Some of the comments suggested the definition cross reference 7 CFR part 400, subpart G.

*Response:* FCIC agrees with the comments and has added a definition of ''actual production history (APH).''

*Comment:* Several commenters recommended adding the definition of ''area.'' Some of these commenters stated a definition is warranted because it is possible to interpret ''area'' to be surrounding townships, sections, etc., and the term could mean something different depending on the region of the country where the crop is grown. Another commenter stated that a definition is needed since the term ''area'' is used throughout the policy. Another commenter stated it is not clear who determines the area. An additional commenter stated the use of the term ''area'' should be consistent throughout the policy. One commenter recommended the definition take into consideration a three-mile perimeter from the unit and consider the soil, climate, water, and topographic conditions and other circumstances substantially similar to those in the unit.

*Response:* FCIC agrees the term ''area'' should be defined. A definition has been added for ''area,'' which encompasses all usages of the term in the policy. The insurance provider is responsible to determine the area in accordance with the definition. The definition of ''area'' cannot be limited to a certain size because many usages of the term require that the area have same characteristics, which may not fit within the suggested size.

*Comment:* A commenter recommended adding the definition of ''average yield.'' A commenter stated the definition of ''average yield'' is verbatim with the definition of ''approved yield,'' although as used in the program the two terms have very different meanings. The commenter recommended revising the definition of ''average yield'' and to consistently use each term in a manner consistent with its respective definition. Several commenters recommended revising the definition of ''average yield'' by changing ''* * * including any adjustments * * *'' to ''* * * prior to any adjustments * * *'' and/or including a reference to the average yield as the ''preliminary'' APH yield, as used in the Crop Insurance Handbook (''CIH''). A commenter recommended reconsidering the reference to section 36 in the definition of ''average yield'' since ''average yield'' is used in rate calculations for yield floors as well.

*Response:* The definition of ''average yield'' was included in the proposed rule. FCIC agrees the definition of ''average yield'' should not be the same as the definition of ''approved yield.'' The definitions of ''average yield'' and ''approved yield'' have been revised in this final rule such that the approved yield is the yield after it has been adjusted in accordance with the policy provisions. The average yield is the yield prior to any such adjustments. A reference to ''preliminary APH yield'' is not included in the final rule because it is not used in the policy. If the term is used in the CIH, it should be defined there. FCIC agrees the reference to section 36 does not include all adjustments that may be made prior to calculating approved APH yields and has revised the definition of ''average yield'' to include other adjustments.

*Comment:* Several commenters indicated buffer zones cannot prevent drift and unintended contact, and, at best, can only minimize contamination. Some of the commenters recommended revising the definition of ''buffer zone'' by replacing the words ''prevent the possibility'' with ''minimize the possibility.'' Other commenters recommended FCIC accept any buffer zone approved by an organic farm's accredited certifier, used in any certified organic operation, or included in an organic plan.

*Response:* FCIC agrees buffer zones cannot always prevent contamination of organic acreage and has replaced the word ''prevent'' with the word ''minimize'' in the definition of buffer zone. FCIC agrees that buffer zones should be those included in the organic plan that have been approved in writing by an accredited certifier. However, FCIC cannot accept buffer zones that are used in any certified organic operation, unless such buffer has been approved by the certifying agent, to avoid any conflicts within the policy. FCIC has clarified the definition accordingly.

*Comment:* A commenter asked how a company, agent or adjuster will know if the certifying agent is ''accredited by the Secretary.''

*Response:* The company, agent or loss adjuster can determine whether a certifying agent is accredited by the Secretary by accessing the list of accredited certifying agents on the National Organic Program Web site at *http://www.ams.usda.gov/nop/CertifyingAgents/Accredited.html.*

*Comment:* A few commenters recommended defining ''commonly used.''

*Response:* The phrase ''commonly used'' has been removed from this rule, including the proposed definition of ''good farming practices,'' because FCIC has determined that it is not a useful measure to determine whether a practice is or is not acceptable in an area. The more accurate measure is whether the practice used is generally recognized as agronomically sound since generally recognized is a judicially determined objective standard.

*Comments:* Many comments were received regarding the definition of ''cover crop.'' The comments are as follows: (1) Several commenters recommended revising the definition to indicate the effect on coverage of haying, grazing or otherwise harvesting the cover crop. The commenters stated it is important to clarify commercial use of a cover crop can affect coverage for other crops on the same acreage; (2) A

few commenters stated the definition should be consistent with the definitions of ''first crop'' and ''second crop.'' One commenter asked if the reader should be referred to the definition of ''second crop;'' (3) Several commenters recommended revising the definition to exclude acreage eventually used for haying or grazing, intended for harvest. Other commenters thought it would be helpful to clarify ''left in place'' means not haying, grazing or harvesting; (4) A commenter suggested adding ''as defined by FCIC'' to the proposed definition; (5) Several commenters stated the definition of ''cover crop'' is too restrictive and inaccurate because it requires widespread or common usage before innovative alternative practices are recognized. A few of the commenters recommended replacing ''commonly used in the area'' with ''agronomically appropriate to;'' (6) A few commenters recommended adding purposes for cover crops such as enhancing soil health and nutrient availability, controlling weeds and pests, reducing fertilizer and pesticide costs, conserving water moisture, and protecting water quality; (7) A few commenters suggested deleting the proposed language indicating cover crops are generally left in place for an entire growing season. Some of the commenters stated producers will plant more than one cover crop on the same ground at different points during the same growing season, and cover crops often bridge two growing seasons; (8) A commenter recommended using the following definition: ''A crop or a succession of crops that are agronomically appropriate which are planted for green manure, erosion control, to enhance soil health and nutrient availability, control weeds and pests, reduce fertilizer and pesticide costs, conserve water moisture, and protect water quality. The crop is generally left in place for a portion of the growing season, an entire growing season, or bridging two growing seasons;'' (9) A few commenters stated using the phrase ''generally left in place'' causes the definition of ''cover crop'' to be unclear and creates ambiguity. Some other commenters recommended deleting ''generally left in place for one growing season;'' (10) A few commenters asked if grain planted for wildlife qualifies as a cover crop;'' (11) A commenter asked if ''left in place'' meant it cannot be hayed or grazed; (12) A commenter recommended defining ''green manure;'' (13) A commenter suggested inserting ''surrounding'' before ''area'' in the definition of ''cover crop;'' (14) A commenter stated it is unclear what constitutes or qualifies as a cover crop; and (15) A commenter stated a cover crop could be commonly planted but not meet the requirements in the Prevented Planting Loss Adjustment Manual, and the definition should be more crop specific.

*Response:* FCIC does not agree the definition should include the insurance coverage impacts of haying, grazing or otherwise harvesting a cover crop. Those provisions are more appropriately included in sections 15 and 17, which state the impact on insurance if a cover crop is hayed, grazed or otherwise harvested. Therefore, no change has been made in response to this recommendation. FCIC has revised the definition of ''second crop'' to include cover crops. FCIC agrees the definition of ''cover crop'' should refer to the definition of ''second crop'' and has revised the definition accordingly. FCIC does not believe excluding hayed or grazed acreage from being a cover crop in the definition is as clear as stating the consequences of haying or grazing the cover crop in sections 15 and 17. Therefore, the recommended change has not been made. Use of the phrase ''as defined by FCIC'' in a definition only creates ambiguity because FCIC can only define terms in the definitions. Therefore, no change has been made in response to this recommendation. As stated above, FCIC has removed all references to ''commonly used'' and instead replaced it with the requirement that the cover crop be generally recognized by agricultural experts as agronomically sound for the area. FCIC agrees to add a definition of the term ''generally recognized.'' ''Left in place'' in the proposed provision did not mean it could not be hayed or grazed. In the proposed definition, it was intended to mean the crop would remain on the acreage for one growing season. However, FCIC agrees with comments recommending deletion of provisions indicating cover crops are generally left in place for one growing season and has removed this provision. FCIC has not accepted the recommended definition of ''cover crop'' because it is too restrictive to list the possible uses. FCIC agrees there are many uses for cover crops and has elected to remove the specific uses, other than the most common which is erosion control, and instead has referenced the purpose of cover crops as being related to conservation or soil improvement. However, FCIC has adopted a similar standard of agronomic soundness in its definition. A crop planted for wildlife use may qualify as a cover crop if it complies with the definition of ''cover crop.'' Since FCIC has removed the specific uses from the definition, the term ''green manure'' no longer needs to be defined. FCIC has defined the term ''area.'' Therefore, there is no need to include the term ''surrounding.'' With respect to what qualifies as a cover crop, provided that the crop meets the definition, it will be considered a cover crop. FCIC has revised the definition to improve clarity and all procedures will be revised to be consistent with such definition.

*Comment:* A few comments were received regarding the definition of ''double crop.'' The comments are as follows: (1) A commenter recommended amending the definition of ''double-crop'' by stating ''two or more different crops;'' (2) A commenter recommended replacing ''practice'' with ''cultural agronomic practice;'' (3) A commenter recommended clarifying that the words ''the practice of * * *'' means it is routinely done by the grower, not just one time; and (4) A commenter recommended including, in the definition of ''double-crop'' information about a third crop on the same acreage if two crops have already been planted in the same year, even if either or both crops fail.

*Response:* Although not common, double cropping requirements could be met with multiple plantings of the same crop, such as tomatoes or other vegetable crops that have multiple planting periods and harvests in the same crop year. No changes have been made in response to this comment. To eliminate any ambiguity caused by the different uses of the term ''practice,'' it has been removed from the definition. It is not necessary for the definition to require routine performance of double cropping because the provisions in sections 15 and 17 specify the producer must have double cropped acreage in at least two of the last four crop years in which the first crop was planted or grown on it. No changes have been made in response to this comment. Since the provisions in section 9 specify how crops planted following a second crop will be handled, it is not necessary to include such a provision here. No changes have been made in response to this comment.

*Comment:* Several comments were received regarding the proposed definition of ''first crop.'' The comments are as follows: (1) A few commenters recommended defining ''first insured crop'' rather than ''first crop;'' (2) A commenter stated it is irrelevant if the first crop is insured or not; (3) A commenter stated, for the purposes of prevented planting, it should not be

necessary for the ''first crop'' to be insured and the term should be consistent with the definitions of ''cover crop'' and ''second crop;'' (4) A few commenters recommended separate definitions for ''first crop'' and ''first insured crop'' and a review of the provisions in which the terms are used; (5) A few commenters are concerned about situations in which a first crop is planted and not insured; (6) A few commenters are concerned about making the assumption that ''first crop'' and ''crop'' are to be interpreted differently, and that there will be confusion when dealing with double-cropping or following another crop and not following another crop practices for crops such as soybeans. One of these commenters was also concerned about the extra work and confusion generated due to the necessity of explaining potential outcomes to insureds of planting a second crop and of insureds making decisions to insure only some acreage of a crop; (7) A commenter recommended revising the definition of ''first crop'' as follows: ''The first agricultural commodity planted on any specific acreage that would reach maturity in the current crop year;'' and (8) A commenter stated the example in the definition of ''first crop'' fails to address short-rated wheat.

*Response:* For the reasons stated below, FCIC agrees with the commenters that using the term ''first insured crop'' would be less confusing to administer than the term ''first crop'' and it has revised its definitions and other provisions accordingly. Section 108 of ARPA clearly requires that to qualify as the first crop, the crop must be insured. As stated above, FCIC has made the definitions of ''first insured crop,'' ''second crop'' and ''cover crop'' consistent with one another. If a first crop is planted and not insured, it is not considered a first crop and the subsequently planted crop, if insured, would be the first crop. FCIC cannot accept the recommended definition of ''first crop'' since the requirements for a first crop are specifically stated in section 108 of ARPA, which includes the requirement that the first crop be planted for harvest in the crop year, not just reach maturity in the crop year, which is reflected in the proposed definition. The definition only requires that the crop be insured and planted for harvest, not actually harvested. Since short rated wheat is planted for harvest, it would qualify as a first crop.

*Comment:* Several commenters recommended separating fall and spring crops when defining ''first crop.'' The commenters did not think that the intent of ARPA was to discourage coverage of multiple crops in different crop seasons, and instead think the intent is to limit multiple crops within the same crop season, and recommended revising the definition of ''first crop'' to include the crop season. The commenters further stated the first spring seeded crop should be the ''first crop'' even though an insurable fall-seeded crop was planted on the same acreage.

*Response:* FCIC disagrees with the commenters. The provisions of ARPA do not distinguish between fall and spring season crops. The definitions of first and second crops contained in ARPA specifically reference the crop year rather than crop season. Since fall and spring crops are planted for harvest in the same crop year, they cannot both be considered as first crops. Therefore, no change has been made.

*Comment:* There were a large number of comments regarding the definition of ''good farming practices'' and for the purposes of addressing these comments, FCIC has grouped them into four following categories: (a) reasons the definition is generally inadequate; (b) statements and questions regarding the definition; (c) recommended replacement definitions; and (d) concerns regarding organic and sustainable farming practices.

(a) Many commenters stated the definition of ''good farming practices'' is inadequate for the following reasons: (1) It fails to establish a standard which is objective, consistent or ascertainable; (2) It is confusing, poorly worded, and may open up ''good farming practices'' to include virtually anything due to the language included in the last sentence; (3) There is no objective standard because it is whatever FCIC says it is; (4) Producers nor insurance providers will be able to determine whether FCIC has recognized a particular practice to be necessary, and certainly not on a timely basis; (5) It instructs the producer to ''contact'' the company ''to determine if such practice is insurable'' but does not tell how the company is to establish whether FCIC recognizes a particular practice as necessary; (6) It lacks recognition of the thousands of permutations of seed, seeding rate, row spacing, tillage practices, fertilization, irrigation, chemical application, herbicide application, harvesting procedures, and the timing of each that are currently loosely defined as ''good farming practices;'' (7) The word ''should'' used in a statutory or contractual context always invites problems (the commenter stated ''should'' denotes an aspirational goal and aspirational goals are for preambles and political speeches, not contractual or statutory terms; (8) Use of the words ''area,'' ''commonly,'' and ''widely'' (also used in sections 3 and 8) creates ambiguity; (9) It does not address whether a common practice is an insurable practice, *e.g.,* it is a ''common'' practice in Iowa and Missouri to plant Roundup-ready seed into established grass, then burn it down; however, this is not an insurable practice; (10) Inclusion of ''agronomic and weather conditions in the area'' implies a temporal dimension that may invalidate certain practices that would normally be considered good; (11) The term ''farming practice'' is not defined; (12) It is unclear who makes the determination of good farming practices (FCIC, NRCS, and private insurers are all referenced or cross-referenced in the definition); (13) It infers that only sustainable conventional practices are recognized as being good farming practices; and (14) Farmers will miss planting windows because FCIC will not be able to provide determinations quickly when they are needed. One of these commenters asked what was meant by ''recognized.''

*Response:* FCIC agrees that the definition of ''good farming practices'' should have an ascertainable standard and has revised the definition to include production methods generally recognized by the agricultural experts for the area. Further, as stated above FCIC has added a definition of ''generally recognized'' to add objectivity to the definition. FCIC agrees it is not reasonable to expect FCIC to know all good farming practices for all crops. The definition has also been revised to indicate the insurance provider will continue to make the determination of whether the production method is a good farming practice and FCIC will only assist in making such determinations if asked. If asked, FCIC will consult with agricultural experts familiar with a specific area for assistance in determining good farming practices in these cases. FCIC will also provide procedures informing insurance providers or insureds where to send requests for a determination of good farming practices. FCIC agrees with the commenter regarding the term ''should'' and for this and other reasons stated above, FCIC has removed the entire sentence from the definition. FCIC has defined the term ''area'' for the purposes of clarity and has removed the references to ''commonly'' and ''widely.'' FCIC does not agree the definition should address whether or not a farming practice is insurable. Insurable practices are designated in

other parts of the policy. FCIC does not agree with the comment regarding temporal and agronomic conditions. Climatic and agronomic conditions such as soil type and annual rainfall are not temporal. Further, even localized weather conditions should be considered in determining whether a production method is a good farming practice because they have an impact on the growth of the crop. References to weather and agronomic conditions have been removed from the definition of ''good farming practices'' and placed in the definition of ''area.'' FCIC agrees what constitutes ''farming practices'' should be included in the definition and has revised the definition to explain they are productions methods utilized to produce the insured crop. The comment regarding the inference that only sustainable conventional practices are recognized as good farming practices has been clarified to distinguish between conventional, sustainable, and organic agricultural practices. Since insurance providers will be making these determinations, the timing should be no different than under the previous definition under most circumstances.

*Comment:* Many commenters had the following statements and questions regarding the definition of ''good farming practices:'' (1) Substituting FCIC and NRCS as arbiters in place of Extension does little to rectify the problem, and they recommend greater clarity about how good farming practice decisions will be made and by whom, and how they will be communicated to all parties; (2) Recommend clarifying what ''recognized by FCIC'' means; (3) The definition of ''good farming practices'' does not include the ''common usage'' test, but looks for practices that are compatible with the agronomic and weather conditions in the area—it is too vague to be meaningful to producers; (4) The definition misapprehends the role of accrediting agencies under the National Organic Program because they do not ''recommend'' farming practices; (5) The most effective means of enhancing the integrity of the Federal crop insurance program and reducing producer fraud and abuse would be to establish a totally objective ''good farming practices'' standard, and one that can be ascertained very quickly in all circumstances; (6) A question was asked regarding whether FCIC is changing what practices are insurable with the new definition; (7) A listing of ''good farming practices'' is necessary and producers must know where to find the listing since the insured has the right to know which practices are recognized by FCIC; (8) A question was asked whether FCIC will publish a listing of ''good farming practices'' and will the information be contained in the Special Provisions; (9) It will be a huge task to list the thousands of good farming practices and there is no provision for producers to request an appeal if a certain practice is not listed; (10) The reference to ''produce at least the yield used to determine the production guarantee'' may cause confusion in replant situations since planting after the final planting date results in yield reductions; (11) It is necessary to establish a procedure for quick turn around time for the many questions companies will receive from policyholders; (12) A question was asked what process will be used to obtain approval of a farming practice from FCIC and is it the obligation of the insured, as opposed to the insurance provider, to obtain a decision; (13) A question was asked how will the insured and insurance provider know, in advance, what FCIC considers to be good farming practices for a given county; (14) It is necessary for producers to know, up front, which practices FCIC will accept and it is necessary for FCIC to publish something by crop, state and county by a certain date; (15) FCIC should not have the ability to second-guess after the fact, rather its determinations must be made known up front at the same time growers are faced with the situations that cause disputes; (16) Add a review process for ''good farming practices'' determinations that requires the producer to be given an opportunity to review and respond to the evidence available to or considered by the agency staff person who made the original adverse determination; (17) FCIC does not have sufficient knowledge to know what sustainable and organic practices should be considered good farming practices; (18) FCIC failed to capture the intent of Congress to reduce discrimination against producers using sustainable and organic farming practices;'' and (19) ''Common usage'' is a poor proxy for ''scientific soundness,'' the criteria set by Congress and indicated reference to common usage recurs throughout the rule, including §§ 407.9(3)(c)(2) and 457.8(b)(2).

*Response:* FCIC has revised the provision and now the insurance providers will be making the determinations based on what agricultural experts determine are generally recognized production methods. FCIC has clarified that it will only make such determinations if asked to do so. FCIC has deleted the reference to ''recognized by FCIC'' so no clarification is needed. FCIC has clarified the provisions by using weather, agronomic and other conditions to define the area. With respect to good farming practices, FCIC has clarified that the key is whether the crop will make normal progress toward maturity and produce the specified yield. Such determinations are made by agricultural experts based on generally recognized production methods. FCIC agrees that the accrediting agency may not recommend farming practices. However, in the organic plan, the accrediting agency must approve the production methods to be used by the producer. FCIC has revised the definition to add objectivity and allow determinations to be made as expeditiously as possible. FCIC has not changed the practices that are insurable with the new definition. It has simply clarified what constitutes a good farming practice. Insurable practices are designated in other parts of the policy. Since FCIC will no longer be making the determinations of good farming practices, it does not intend to develop or provide a listing of good farming practices. As pointed out by commenters, the large number of farming practices in use would make such a list extremely difficult, if not impossible to produce and maintain. Determinations must be made on a case by case basis based on individual farming operations. FCIC has revised the definition to account for late planted acreage. Since insurance providers will be making the determinations, the turn around time should be no different than under the current provisions. Since the definition has been revised, comments regarding decisions made by FCIC are no longer applicable for a majority of the producers. FCIC intends to issue procedures for those situations where FCIC is asked to render a determination. The reconsideration process requires FCIC to review any initial determination made by the insurance provider if it is disputed by the producer. However, initial determinations will be made by the insurance provider and can be made up front at the request of the producer. In the reconsideration process, the producer will have an opportunity to review and respond to the information upon which the initial determination of good farming practices has been made. Decisions made by FCIC in the reconsideration process will not be subject to further administrative appeal. FCIC agrees neither it nor the insurance providers have all the knowledge necessary to determine good sustainable or organic farming practices and,

therefore, has deferred such determinations to agricultural experts who do have the knowledge to determine good farming practices. FCIC does not believe the definition contained in this final rule discriminates against any producer. The definition allows sustainable practices to include those generally recognized by the agricultural experts and good organic farming practices to include those generally recognized by the organic agricultural industry, or contained in the organic plan. Further, since the expectation is that crops produced under a sustainable practice will produce the same yields as a crop produced under a conventional practice, the definition should not discriminate between these practices. In response to previous comments, the term ''common usage'' has been removed from the definition.

*Comment:* Commenters recommended replacing the proposed definition of ''good farming practices'' with the following: (1) ''Farming practices, including sustainable farming practices, generally recognized and used by agricultural producers in soil, climate, water, topographic and other circumstances substantially similar to yours to assure the insured crop makes normal progress toward maturity and produces at least the yield used to determine the production guarantee or amount of insurance.'' The commenter stated ''Generally recognized'' is a phrase venerated in accounting, engineering, legal and other contexts, and which has been widely interpreted by courts to mean just what it says; in this proposed definition, ''good farming practices'' would be what good farmers do, an objective and ascertainable standard, not what academics theorize or the Agency decrees; (2) ''Those farming practices recognized and required by RMA for the crop to be insured. Good farming practices are those necessary to enable the crop to make normal progress toward maturity and produce at least the guaranteed insurable yield. For crops that have not previously been insured or insurable under the Act, RMA will determine guidelines for acceptable good farming practices for each crop in each area and post that information on the RMA Web site. Otherwise, acceptable good farming practices are those farming practices commonly used in the area, compatible with the agronomic and weather conditions in the area, and that have proven to successfully produce at least the guaranteed insurable yield of the particular crop in the area. It is your responsibility to find out what the good farming practices for your crop in your area are and to follow those practices in order to produce an insurable crop. We suggest you contact your nearest Cooperative State Research, Education, and Extension Service (CSREES) office to obtain this information and recommendations for growing your crop. You should contact us if you have any questions regarding good farming practices, especially if you intend to use a farming practice not commonly used in the area or that differs from the recommendations obtained from CSREES;'' and (3) ''Farming practices used by the majority of growers in the county and proven to be sufficient to establish the crop and produce a yield equal to at least the yield used to establish your guarantee.''

*Response:* FCIC agrees in principle with the comment recommending good farming practices being generally recognized in the area. However, such a determination should be made by agricultural experts and FCIC has revised the final definition accordingly. FCIC has also improved the definition of ''good farming practices'' by adding a definition for ''area'' and ''generally recognized,'' clarifying the late planting issues, and that it is insurance providers that make determinations and FCIC will only make a determination if asked. The recommendation that would have required FCIC to recognize all good farming practices, post information on the website regarding determination of good farming practices for new crops, and otherwise provides for a ''common usage'' test, is cumbersome and does not eliminate deficiencies noted by other commenters. The recommendation requiring a majority of producers in the county to use the practice would be difficult to administer, does not address concerns regarding sustainable or organic practices, and also does not eliminate deficiencies noted in the comments received.

*Comment:* Commenters recommended revising the definition of ''good farming practices'' to: (1) Distinguish between sustainable and organic farming practices and address both in each reference to good farming practices; (2) Clearly place sustainable and organic practices on an equal footing with conventional practices; (3) Include a statement of non-discrimination against sustainable and organic practices and systems; (4) Not require sustainable or organic farming systems to be commonly in use in a given geographic area in order for producers using those systems to be eligible; (5) Make the definition in the Basic Provisions consistent with that in the GRP by including references to organic farming practices, and to add ''* * * organic farming practices will be considered to be good farming practices if they are those specified in the organic plan,'' (found in section 37 of the proposed Basic Provisions) to the definition in both policies; (6) Remove any suggestion the burden of proof lies with the producer or that private insurers will be the final arbiters of what constitutes good farming practices; (7) Replace ''area'' with ''county;'' (8) State farming practices not commonly used in the area would not be insurable unless approved by written agreement; and (9) Include organic systems in the definition of ''good farming practices'' by adding ''For crops grown under an organic practice, the farming practices included in an approved organic farm plan and those practices approved by a private organization or government agency that certifies organic products in accordance with 7 CFR part 205 and is accredited in accordance with the requirements of the National Organic Food Production Act of 1990. Commenters suggested this addition would include those who have the knowledge and expertise necessary to make experience based determinations, and that FCIC, NRCS, and private insurers have an insufficient knowledge base and training to make appropriate determinations.

*Response:* FCIC agrees the definition should distinguish between sustainable and organic farming practices and has revised the definition accordingly. Further, the definition has been revised to treat sustainable, organic, and conventional practices equally. In response to previous comments, the term ''common usage'' has been removed from the definition. The definitions in the Group Risk Policy and in the Basic Provisions have been made consistent in this final rule to the extent possible and since reference to organic farming practices has been added to the definition, FCIC has removed the proposed section 37(f). The producer is required to be in compliance with the policy terms. The insurance provider is supposed to verify that such compliance has occurred, which includes a determination of whether good farming practices have been followed, and ultimately FCIC will make the determination of good farming practices in the reconsideration process. The term ''area'' has been retained in the definition and has been defined. The term ''county'' was considered but not used because it is too restrictive in many instances because the area is defined by characteristics of the acreage, not a political subdivision. Requiring

the use of written agreements would be discriminatory against producers who use good farming practices that are not commonly used in the area, such as some sustainable practices. Therefore, this change has not been made. FCIC has revised the definition of ''good farming practices'' to include similar language to the recommended language regarding organic farming.

*Comment:* Several commenters stated the definition of ''prohibited substance'' is incomplete because it does not specify what list will be used to determine ''prohibited substances.'' The commenters recommended clarifying if the listing of prohibited synthetic substances and the list of acceptable natural substances attached to the National Organic Program (NOP) will be used or if other lists will be used. Some commenters recommended clarifying that the list of prohibited synthetic substances and the list of acceptable natural substances of the NOP are the lists to be used.

*Response:* FCIC has revised the definition to include a reference to the lists of prohibited and acceptable substances published at 7 CFR part 205.

*Comment:* A commenter asked what the difference is between ''certified organic,'' ''organic'' and ''transitional organic'' acreage, and recommended either defining ''organic acreage'' or removing it from the definition of ''prohibited substance.''

*Response:* The proposed provisions define ''certified organic acreage'' and ''transitional acreage.'' The term ''transitional organic acreage'' is not used nor defined in the provisions. The difference between transitional acreage and certified organic acreage is that transitional acreage may have organic practices used but it has not met the requirements to be considered certified organic acreage by the certifying agent. FCIC agrees with the commenter that reference to ''organic acreage'' should be removed from the definition of ''prohibited substance'' because the term ''organic acreage'' could be misleading and is not defined or used elsewhere in the provisions. Therefore, FCIC has revised the definition of ''prohibited substance'' to remove the reference to ''organic acreage.''

*Comment:* Several comments were received regarding the proposed definition of ''second crop.'' The comments are as follows: (1) A commenter suggested the defined term state the significance of summer fallow and continuous cropping practices; (2) A commenter stated the concluding sentence should be eliminated because a cover crop planted after a first crop should not be considered a second crop when it is hayed, grazed or otherwise harvested; (3) A commenter stated the definition needs to be made consistent with the definition of ''cover crop'' and ''first crop;'' (4) Several commenters stated the word ''immediately'' in the first sentence should be deleted as it suggests a specific time to plant the second crop and is ambiguous; (5) Another commenter recommended defining the term ''immediately;'' (6) A commenter suggested clarifying multiple crops on the same acreage are approved provided the actuarial table allows for more than one crop on the same acreage in the same year; (7) Several commenters stated the policy does not take into account an initial crop that is not insured removes moisture and nutrients from the soil, which increases the yield risk of any following crop; (8) A few commenters stated the phrase ''hayed, grazed, or otherwise harvested'' should be used to be consistent with other areas in the policy; (9) A few commenters stated the definition encroaches on the definition of ''cover crop'' by implying a cover crop can be hayed, grazed or harvested (not remain ''in place''); (10) A commenter stated ''will be'' is an errant change in tense; (11) A commenter suggested clarifying how a second crop can be the same crop as a first crop and if the second crop has to be insured or not; (12) A few commenters stated the definitions would allow two uninsured crops and then a ''first crop'' which might not meet the requirements of the definition of ''good farming practice;'' (13) A commenter suggested clarifying how crops with multiple planting periods will be handled; and (14) A commenter stated the definition may not be clear to a layman.

*Response:* FCIC does not agree it is necessary to state the significance of summerfallow or continuous cropping practices in the definition of ''second crop.'' Section 108 of ARPA does not make any distinction with respect to the farming practice used. All that is material is whether the second crop was planted for harvest. For the purpose of section 108 of ARPA, FCIC has determined that harvest is the removal of crop from the acreage by any means. Since haying and grazing removes the crop from the acreage, it is considered harvested. However, FCIC has clarified that for the purpose of determining the end of the insurance period, harvest of the crop will be as defined in the Crop Provisions, not as determined in the definition of ''second crop.'' FCIC has revised these definitions to ensure that they are not in conflict with one another. FCIC agrees the word ''immediately'' could be misinterpreted and has replaced it with the ''next occurrence of planting.'' Since the second crop is not required to be insured, there should be no reference to its insurability. Section 108 of ARPA does not consider the effect of the first crop on the acreage in determining whether the next crop planted is considered a second crop. As stated above, if the initial crop planted is not insured, it is not a first crop. If the initial crop is insured, the only determinant is whether the next crop was planted for harvest. However, removal of moisture and nutrients from the soil by the first crop or any previously planted uninsured crop, or whether the producer used good farming practices must still be considered in determining whether the crop is insurable. There are several provisions that limit insurance on multiple crops and, if planting multiple crops on the same acreage is considered to be a poor farming practice, then no insurance would be provided for any crop that is planted using a poor farming practice. FCIC has revised the provisions to consistently use the phrase ''hayed, grazed or otherwise harvested'' throughout the Basic Provisions. However, the definition has been revised to make it clear that for the purposes of determining the end of the insurance period, the definition of ''harvest'' in the Crop Provisions controls. As stated above, FCIC has revised the definitions of ''second crop'' and ''cover crop'' to ensure that they are consistent with each other. However, a producer may still elect to hay, graze or otherwise harvest a cover crop. The definition of second crop is intended to provide the conditions under which a cover crop will be considered to be a second crop. The definition has been revised to make it clearer that planting of the same crop twice on the same acreage in the same crop year may be considered as both a first and second crop if replanting is not required by the policy. FCIC agrees the definition should be modified to indicate the second crop does not have to be insured to be considered a second crop and has modified the definition accordingly. The revisions made in response to the comments clarify the definition. Crops with multiple planting periods may qualify as first and second crops and will be administered accordingly. For example, if a crop is planted in one planting period and the same acreage is subsequently planted to the same crop in the next planting period, and replanting is not required under the policy, the first and second crop

provisions of the policy would be applicable.

*Comment:* Several commenters stated that if the term ''Secretary'' is used only in the definition of ''certifying agent'' it might be better to refer to the ''Secretary of Agriculture'' in that definition rather than adding a new definition.

*Response:* FCIC agrees with the commenters and has deleted the definition of ''Secretary'' and amended the definition of ''certifying agent'' as suggested.

*Comment:* Commenters stated the following regarding the definition of ''sustainable farming practice:'' (1) The proposed definition is narrow and makes ''sustainable farming practice'' synonymous with conservation practice standards in the local NRCS Field Office Technical Guide; (2) Merely cross referencing another agency's criteria for conservation practices without some critical analysis to determine the adequacy of those standards for crop insurance purposes is insufficient and a more accurate definition is needed; (3) The definition should, at the very least, reflect the existing statutory definition of sustainable agriculture (7 U.S.C. 3103(17)) and incorporate an ''including'' clause to reference the NRCS or university extension approved practices and systems; (4) Producers and reinsured companies should not be shunted off to NRCS to find out what counts as a ''sustainable farming practice;'' (5) RMA should consult with USDA's Agricultural Research Service (ARS) and the Organic Farming Research Foundation in developing a framework for a good sustainable and organic farming practices definition that recognizes current practices as well as providing provisions for the kind of experimentation—for instance, in varied and complex crop rotations—that may be unfamiliar to RMA but have made organic farming the successful and reliable practice it is today; (6) The definition could be deleted since the term is not used anywhere except in the definition of ''good farming practices;'' and (7) NRCS is not defined as part of the USDA.

*Response:* FCIC agrees the definition should be broadened and has revised the definition to remove the reference to NRCS and incorporate those practices generally recognized agricultural experts for the area to conserve or enhance the environment. This revision allows experts to determine whether the practice used is appropriate for the area. Although NRCS and others may have guidelines or regulations regarding sustainable farming practices it should not be necessary to reference them in this policy. It is inappropriate to incorporate the definition of ''sustainable agriculture'' from 7 U.S.C. 3103(17) because it includes provisions that are not suitable for an insurance policy such as sustaining and enhancing economic viability and quality of life. FCIC has incorporated those provisions regarding enhancing and conserving natural resources. FCIC has included provisions that would be permit consultation with ARS and the Organic Farming Research Foundation to determine whether the farming practice used or to be used qualifies as a sustainable farming practice. Just because a term is only used once, it must still be defined if there could be any confusion as to its meaning. Since the term ''NRCS'' is removed from the definition, it is not necessary to define it.

*Comment:* Several commenters thought the provisions in section 3(f) would encourage producers to make a decision to plant or not plant based on the effect planting has on the APH.

*Response:* Due to other revisions, the applicable provision is now section 3(e). Producers must make their decisions based on what is best for their farming operations. However, sometimes those decisions have consequences. Under this provision, if the producer elects to plant after a crop has been prevented from being planted, the consequence is that the producer will receive a yield for the purposes of APH. Since this is statutorily mandated, FCIC has no choice but to include the provision even though it may affect the producer's decision. Additionally, FCIC has revised section 3(e) to clarify that the provisions contained therein do not apply if the double cropping requirements have been met, because section 108 of ARPA specifies that if the producer meets the double cropping requirements, the assigned yield will not be included in the APH for the first insured crop that was prevented from being planted.

*Comment:* A few commenters acknowledged the provisions in section 3(f) are mandated by ARPA, but stated there will be a number of underwriting and data processing questions to be resolved in order to be able to implement this in the APH process. For example, separate yield descriptors may be needed to identify prevented planting yields and blended yields and the addition of prevented planting data to the Policy Holder Tracking System. In this case, there may be more detail in section (3)(f)(1)–(3) than is needed in the basic policy language. As written, it will require data processing changes to at least three APH entries (total production, acres and per-acre yield) when, if not mandated by the policy language, it might be possible to achieve the same result while only affecting the per-acre yield entry.

*Response:* Even though it may affect several APH entries and some systems may be impacted, it is important that the information be in the policy so the producer can determine how planting a second crop will affect his or her yield. No change has been made.

*Comment:* A commenter suggested changing ''APH yield'' to ''approved yield'' in section 3(f).

*Response:* FCIC agrees with the comment and has changed the provision accordingly.

*Comment:* A commenter stated section 3(f) applies only to APH crops and that non-APH crops should be addressed.

*Response:* Section 108 of ARPA only refers to adjustments to the APH that are to be used to determine the subsequent years' APH. There are no references to other plans of insurance. No change has been made.

*Comment:* A few commenters recommended deleting section 3(f) because, in prevented planting situations, there is no actual production history.

*Response:* FCIC cannot delete redesignated section 3(e) because section 108 of ARPA now requires a yield be determined for prevented planting acreage to be used in the actual production history. No change has been made.

*Comment:* A commenter stated section 3(f) is confusing and recommended calculating the APH based on the harvested acreage in the unit when at least 35 percent of the acreage in the unit is harvested.

*Response:* Section 108 of ARPA mandated that 60 percent of the APH yield will be included in the APH database for the first crop whenever the first crop is prevented from being planted and a second crop is planted. This section did not provide for any exceptions based on the amount of acreage that is prevented from being planted. No change can be made.

*Comment:* A commenter suggested changing the phrase ''its respective yield determined in accordance with this subsection'' to ''60 percent of the approved yield'' in section 3(f)(1).

*Response:* FCIC agrees and has revised the provision accordingly.

*Comment:* Many commenters commented on the provisions proposed in section 9(a)(8) that allow a producer to elect not to insure second crop acreage when there is an insurable loss for planted acreage of a first crop. The comments are as follows: (1) Several commenters stated the term ''elect''

implies a new form is required, and this process would also require the completion of a new or revised acreage report, which does not seem to be addressed; (2) Several commenters asked who would record the election and what procedures would be used; (3) A commenter stated the provisions should be revised so it is clear to the producer how the election is to be communicated and documented; (4) A commenter stated a new form or guideline for the second crop will be needed. They believe it is unclear if a box to check or a new form will need to be used by the adjuster when appraising and releasing the first crop. The commenter added this will be a training issue for all involved; (5) Some commenters stated the provisions will be difficult to administer; (6) Some commenters asked why the sentence is in parentheses. They stated the election is required at time of appraisal, which will require agent involvement in the loss process, which is prohibited by the SRA and this language needs to be coordinated with SRA requirements; (7) A commenter stated the provisions need to be clarified as to when a company releases the acreage, who is responsible or able to accept the insured's request to insure the second crop acreage, the agent or the company; (8) Some commenters stated FCIC should consider whether this would be more appropriate under section 8—Insured Crop; and (9) A commenter believes a cleaner approach would have been to simply include language stipulating insurance for a second crop planted after the failure of an initial crop lost due to non-emergence of seed would not become effective until the second crop emerges. They believe such language would prevent payment of a second indemnity for drought in the same crop year on the same acreage, but still allow a producer who is lucky enough to establish a second crop to pay for and receive coverage for the remainder of the insurance period. The commenter further recommended RMA rescind a 2002 change in the Agency's Loss Adjustment Manual (LAM) that requires a 15-day waiting period after the end of the late planting period before a crop can be appraised for non-emergence. They stated RMA's oft-stated reasoning behind this rule was it prevents a producer from waiting until the last day of the late planting period and then being able to get an adjustment one day later. They suggest if RMA is truly worried about producers waiting to plant until the end of the late planting period (and taking a significant reduction of coverage without any reduction in the associated premium) to get a quick non-emergence appraisal that they instead create rules to apply directly to those very few individuals. The commenter believes for instance, RMA could require a report of the planting date for each insured unit planted during the late planting period and not allow an appraisal until the end of the late planting period or at least 7–10 days from the actual date of planting if planting occurred with less than seven days remaining in the late planting period. They stated this would allow producers who planted by the final planting date to get an appraisal at the end of the late planting period (after their crop has been in the ground at least 15 days) and establish a minimum 7–10 day emergence window for crops planted toward the end of the late planting period. The commenter has in the past been very critical of the addition of the additional 15-day waiting period due to the fact there is no evidence they have been able to discover supporting the need for this rule to address a real problem. Instead, they believe the rule was developed only to be used as a stop gap method for preventing a producer from gaining the release of non-emerged acreage and planting a second crop of grain sorghum before the final planting date. The commenter believes with the development and implementation of the proposed first crop and second crop rule, RMA should remove the additional 15-day waiting period to allow for the timely planting of an uninsured second crop. They suggested if RMA determines a sufficient number of producers are taking advantage of the late planting period, RMA should look into a revised rule similar to the one suggested above to deal specifically with acreage planted during the late planting period.

*Response:* Due to other revisions, the applicable provision is now section 9(a)(7). For GRP policies, the producer will make the election not to insure the second crop acreage on the acreage report if it insured under GRP. For policies other than GRP, the provision has been revised to require that producers provide written notice of the election at the time the first insured crop acreage is released. The format of such written notice is up to the insurance provider. FCIC does not require any specific forms. Under the notice provisions of the policy, it would be the producer's responsibility to provide written notice to the agent. As revised, FCIC no longer believes that the provision will be difficult to administer. Just because a notice is provided to an agent regarding an election at loss time, this does not mean that the agent is to be involved in the loss adjustment. The prohibitions in the SRA continue to apply in these situations. The agent's role is merely ministerial. The parenthesis have been removed. FCIC disagrees this provision would be more appropriate in section 8 since this is an insurable acreage issue that only applies to acreage where a second crop has been planted and is not dependent on the crop planted. FCIC cannot consider the ''non-emergence of seed'' approach recommended to resolve multiple benefit issues addressed by ARPA because section 108 of ARPA specifies that it is applicable whenever the crop is planted for harvest and there is no requirement that the crop actually emerge. Since the Basic Provisions do not address the time a crop may or may not be released, the recommendation to remove LAM procedures cannot be made in this rule. However, all LAM procedures will be made consistent with the provisions of this rule. FCIC has also restructured section 9(a)(7) for clarity.

*Comment:* Some commenters recommended that section 9(a)(9)(i)(A) be deleted, and that alternately, if (A) is not deleted, they recommended it be revised to require all 3 crops to be harvested, not just the 3rd crop. They also suggested that if (A) is not deleted, the ''or'' be changed to ''and.'' A commenter asked if this is trying to address a previous operator on the land, and if not, what it is addressing. They believe the entirety of sections 9(a)(8) and(9) are very difficult to administer, and asked whose problem it ultimately is to properly administer. The commenter stated the agent is saddled with tremendous errors and omission exposure, and that typically agents enter what the insured reports. They added this language would require the agent to ask questions on a hypothetical basis of every insured in an attempt to determine if a situation might possibly exist, which would be an impossible situation, and one they believe will only be administered on a ''gotcha'' basis by RMA.

*Response:* Due to other revisions, the applicable provision is now section 9(a)(8). FCIC does not agree the provision can be deleted. Section 108 of ARPA allows both sections 9(a)(8)(i)(A) and (B) to be conditions upon which the third crop planted on the acreage in the same crop year can be insured. FCIC cannot restrict the ability of the producer to qualify for insurance beyond that specified in ARPA. FCIC agrees the producer should have evidence that three crops have been harvested and has revised the provision accordingly. The suggestion to change

the word ''or'' to ''and'' cannot be made because ARPA allows either the producer to prove that they themselves met the requirement or that previous producers met the requirement on the applicable acreage. Since it is a condition of insurability, it is the insurance providers responsibility to determine whether the crops planted in any crop year are the first, second or third. FCIC understands the provisions are somewhat complex and may require some additional work. FCIC will assist the insurance providers in any way it can to facilitate the process. However, since the provisions are required by ARPA, no change can be made.

*Comment:* A few commenters asked which crops section 9(a)(9) is applicable to (for example, row crops or vegetable crops.) Some of the commenters asked how it would be determined whether or not it is ''an established practice in the area to plant three or more crops for harvest on the same acreage in the same crop year'' and what kind of documentation would be needed.

*Response:* The provisions of redesignated section 9(a)(8) are applicable to all crops, including row and vegetable crops. Whether or not it is a generally recognized practice in the area to plant and harvest three crops will be determined by the insurance providers. No specific documentation is required in the policy. However, if the insurance provider believes the practice is questionable, it should obtain a written opinion from agricultural experts, the organic agricultural industry, or request a determination be made by FCIC.

*Comment:* A commenter would like to see winter wheat, whether intended for harvest or not, considered a first crop with regard to insurability of ''third'' and subsequent crops.

*Response:* ARPA requires the first crop to be an insured crop and planted for harvest. Therefore, winter wheat that is not insured or it is not planted for harvest cannot be considered a first crop when determining the third or more crops. No changes have been made.

*Comment:* Numerous commenters expressed concern with the proposed language in section 14(d)(1) (Your Duties). The comments are as follows: (1) A commenter objected to the proposed provisions stating it is unrealistic to expect an insured to maintain separate production records within the same unit. The commenter also believes the proposed change would unfairly discriminate against any insured who typically double crops; (2) A commenter stated the proposed provisions create a new geographic area or ''subunit'' previously unknown to the federal crop insurance program. The commenter stated in addition to the substantially increased administrative burden on the producer, companies will have to find some way to describe, identify and keep records about such sub-units, which can be infinite in number and change their boundaries from year to year. They believe the proposed provision is simply a bad idea incapable of resuscitation through improved drafting; (3) A commenter stated the proposed requirements should only be at the request of the company, otherwise it is burdensome for both the insured and the company. The commenter stated the proposed provisions require records by acreage, not unit, which they feel is probably not practical; (4) A commenter stated the proposed requirements are too burdensome. The commenter does not believe it should be necessary to keep records separate between first and second crops, since all production is aggregated to the unit; (5) Several commenters stated the proposed requirements are very confusing. They stated the proposed change creates additional record-keeping burdens on the insured, especially if portions of a field or unit were planted to a crop that failed and a second crop is planted on the entire acreage in the field or unit. The commenters believe keeping records for the acreage of the second crop where the first crop failed will be difficult to verify; (6) A commenter stated while the proposed provisions are necessary, the example of keeping production records from 10 acres of wheat may not look practical; (7) A commenter stated the proposed provisions should specifically reference section 15(e)(2) and not just 15(e); (8) Several commenters stated the provisions are confusing and should be clarified. They suggested the parenthetical sentences might be better as a separate item since they provide additional requirements beyond those in the first sentence of the paragraph; and (9) A commenter recommended the last sentence be clarified and specifically state if it is intended to allocate all of the production from a field or if production will be pro-rated on a per acre basis.

*Response:* FCIC agrees the provisions proposed in section 14 (Your Duties) (d)(1) may require additional burdens on the insured and insurance provider. However, ARPA requires that insurance benefits for a first crop be limited when a second crop is planted on the same acreage in the same year if the producer suffers an insurable loss on the second crop, except in the case of double-cropping. Therefore, separate production records are necessary for acreage planted to a first and second crop to determine the appropriate indemnity reduction. FCIC cannot eliminate this requirement and still be in compliance with ARPA. No change has been made. However, if the producer fails to maintain separate records, provisions are also included in section 14 that allow insurance providers to allocate production. FCIC disagrees with the comment that the provisions unfairly discriminate against an insured who typically double crops. Since double cropped acreage is exempt from the indemnity reduction applicable when a second crop is planted for harvest, the additional record keeping requirements would not apply. FCIC agrees that additional records must be maintained for claim audit purposes. However, no specific subunit is created and APH records for the subunit would not need to be maintained for future years. No change has been made. FCIC agrees the reference to section 15 should be changed to reference section 15(e)(2) and FCIC has revised the provision accordingly. FCIC agrees the parentheses in the proposed language are not necessary and has removed them and added language to help clarify this section. FCIC cannot use the per acre basis because there may be circumstances where the yield guarantee is different and using the proportion to liability method takes into account these yield differences. Therefore, no change has been made in response to the comment. However, FCIC has determined it is necessary to state the consequences of failure to provide any production records for the second crop and has revised the provisions to specify that the reduction will continue to apply if such production records are not provided.

*Comment:* Several commenters commented on the provisions proposed in section 14(f) (Your Duties) that require earlier notice of prevented planting. The comments are as follows: (1) A commenter stated the proposed provisions would be beneficial if the prevented planting determination was made at the time of notice. The commenter added that as it is now, there is nothing to encourage the company to make a prevented planting determination until late in the season; (2) A commenter stated the proposed provisions requiring the prevented planting acreage report/notice of loss to be reported earlier than the ''normal'' acreage report create additional reporting and burden. The commenter

questions what is wrong with the current process. They stated this change could result in multiple prevented planting acreage reports and increase loss adjustment expense cost. The commenter stated the company still has to wait to pay prevented planting losses if the crop is insured under a revenue plan of insurance, plus has to wait to see what the producer does get planted, so they do not see any advantage to the earlier reporting requirement for prevented planting; and (3) Several commenters disagreed with the proposed provisions. Some of the commenters do not believe it is feasible for most producers to be documenting prevented planting losses within 72 hours. They stated many crops have different final planting dates, the producer would still be busy trying to plant other crops and that time is critical during spring planting. The commenters recommended the current provisions be retained that allow producers to report prevented planting acres by the acreage reporting date. A commenter stated the proposed provisions are far too strict. The commenter believes notification of prevented planting should be given when producers provide their acreage reports.

*Response:* The insurance providers can certainly make the determinations of the prevented planting at the time notice is given and no longer have to wait until after the acreage reporting date. Under current provisions, the insured is not required to give notice of prevented planting acreage until the acreage reporting date, which is well after the time the insured cause of loss prevented the producer from planting, making it extremely difficult for the insurance company to verify an insured cause of loss existed and prevented planting. The proposed provisions were added to improve program integrity by requiring insureds to report notice of prevented planting within 72 hours of prevented planting, thus allowing the insurance company an earlier opportunity to verify the cause of prevented planting. FCIC agrees the proposed change may create additional reporting requirements for insureds. However, this change is necessary to improve program integrity. FCIC does not agree the proposed provisions create additional loss adjustment expenses or multiple prevented planting acreage reports. The proposed earlier notice of prevented planting is not required to be made on an acreage report, therefore multiple prevented planting acreage reports would not be necessary. Under both the current and proposed provisions, insurance companies are required to verify the producer was prevented from planting due to an insured cause of loss that occurred within the insurance period and adjust the prevented planting claims. Therefore, the burden on the insurance provider remains the same, it is only the timing that is different. Therefore, no change has been made.

*Comment:* A commenter stated the provisions proposed in section 14(f) (Your Duties) conflict with current language in section 33 that specifies notice of loss must be reported to the crop insurance agent and not the company.

*Response:* FCIC does not believe the proposed provision conflicts with provisions in section 33. Throughout section 14, the language for notice requirements references ''us.'' This just means that notice to the insurance provider is provided through the agent, as specified in section 33. Therefore, no change has been made.

*Comment:* Several commenters stated that section 14(f) (Your Duties) should be revised to require the insured must be prevented from planting by the final planting date. A commenter suggested the following language: ''(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after: (1) The final planting date; and (2) If applicable, you determine you will not be able to plant the insured crop within any applicable late planting period.'' A few commenters stated the insured must be prevented from planting by the final planting date, therefore the phrase ''if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable'' should be deleted in section 14(f)(1) (Your Duties). Another commenter suggested the following language: ''(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after: (1) The final planting date. (2) You determine you will not be able to plant the insured crop within any applicable late planting period. (3) If you do plant during the late planting period, you must revise the acreage report to reflect the correct planting 72 hours after the end of the late planting period for the crop.'' A commenter suggested inserting the words ''due to an insurable cause occurring prior to the final planting date'' after the word ''crop'' in section 14(f) (Your Duties).

*Response:* The first suggested change would require two notices and this would be an unnecessary burden on the producer. Therefore, no change has been made. The second suggestion cannot be adopted because it would conflict with the definition of ''prevented planting'' contained in section 1 and provisions contained in section 17, which specify when a producer must be prevented from planting. No change has been made. The third suggestion is not adopted because the producer is already required to report all planted acreage on the acreage report. Therefore, no revision or additional requirements are needed. No change has been made. The last suggestion is not adopted because the purpose of the notice is to allow the insurance provider the best opportunity to determine whether the producer was prevented from planting due to an insurable cause. Therefore, whether the cause is insurable cannot be made a condition of when the notice must be provided. No change has been made.

*Comment:* A commenter stated the change proposed in section 14(f) (Your Duties) will require losses to be reported for each field with prevented planting acreage. The commenter states this will be a major training issue.

*Response:* FCIC does not agree the proposed change will require losses to be reported for each field with prevented planting acreage. Section 14(f) requires notice when the insured crop is prevented from being planted. Notice on a field-by-field basis is not required. Therefore, no change has been made.

*Comment:* A commenter recommended the last part of section 14(f)(1) and all of (2) (Your Duties) be deleted, so it will simply read ''In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after the final planting date.'' The commenter believes the language they recommend be deleted is confusing and can be handled in procedure.

*Response:* FCIC disagrees with the comment. Prevented planting can occur during the late planting period and the producer must be made aware of the reporting requirements under such circumstances. This cannot be done in procedures because the producer does not receive them. Therefore, no change has been made.

*Comment:* A commenter recommended that FCIC amend section 14(f)(1) (Your Duties) to require the insured to provide notice within 72 hours of the late planting period, rather than of the final planting date. They believe an insured that must report notice within 72 hours of the final planting date is more likely to claim a prevented planting loss, and that the

additional planting time may persuade the insured to plant a crop. The commenter stated the purpose of the program is to encourage, not discourage, agricultural production. They stated this change will obviate the need for subsection (f)(2). Another commenter suggested that section 14(f)(1) (Your Duties) should read as follows: ''The final planting date; or'', and strike out all other wording in the proposed subsection (f)(1).

*Response:* Requiring a later notice when the producer never intended to plant the crop during the late planting period inhibits the insurance provider's ability to verify the cause of loss. Additionally, the recommended change does not address when notice of prevented planting would be required for crops that do not have a late planting period. Therefore, no change has been made.

*Comment:* A commenter recommended section 14 (Our Duties) be revised to state that both the government and reinsured companies have the duty to participate in reconsideration, mediation and NAD appeals.

*Response:* FCIC does not agree with the recommended change. Provisions contained in section 14 (Our Duties) referencing arbitration, reconsideration, and appeals are intended to specify when losses will be paid, and not how the appeals process will operate or who will participate. Other provisions contained in section 20, 7 CFR part 11 and 7 CFR part 400, subpart J specify how, and by whom, arbitrations, reconsiderations, mediations and NAD appeals will be conducted. Therefore, no change has been made.

*Comment:* A commenter provided the following comments on the provisions contained in section 14(a) (Our Duties) that require if the insured has complied with all policy provisions, ''we will pay your loss within 30 days after'' agreement, completion of arbitration/appeal/court adjudication. The commenter stated exceptions include the inability to pay and a deferral period. The commenter believes a deferral period in which information may be gathered may be an acceptable delay; however, they believe acceptable reasons for an inability to pay a loss should be clarified. The commenter stated producers have found payment delays to be common and the 30-day rule easily avoided. The commenter believes if payment is not possible within the 30-day requirement, an insured should be compensated for the late indemnity payment.

*Response:* Since no changes were proposed to provisions regarding the insurers inability to determine the amount of the loss contained in section 14(b) (Our Duties) or the provisions regarding deferral of loss adjustment until the amount of loss can be accurately determined contained in section 14(c) (Our Duties), the public was not provided an opportunity to comment on the recommended changes. Therefore, the recommendations cannot be incorporated in the final rule.

*Comment:* A few commenters recommended the words ''the later of'' be added at the end of the text in section 14(a) (Our Duties) so that it reads as follows: ''within 30 days after the later of:'

*Response:* FCIC agrees with the recommendation and has revised the provision accordingly.

*Comment:* A commenter suggested the current language in section 14(a)(1) (Our Duties) be retained because they believe the added portion does not change anything and is not necessary.

*Response:* FCIC agrees with the comment and has revised the provision accordingly.

*Comment:* Several commenters recommended changing the colon at the end of section 14(a)(1) (Our Duties) to a semi-colon.

*Response:* FCIC agrees and the change to section 14(a)(1) (Our Duties) has been made accordingly.

*Comment:* A few commenters suggested the word ''or'' be added at the end of section 14(a)(1) (Our Duties) and at the end of section 14(a)(2) (Our Duties).

*Response:* Under proper drafting procedures, the use of ''or'' before the last paragraph implies that there is an ''or'' between each of the paragraphs in the subsection. Therefore, FCIC has added ''or'' only at the end of (a)(2).

*Comment:* A commenter suggested retaining the current language in section 14(a)(2) (Our Duties).

*Response:* FCIC does not agree. Since reconsideration of determinations regarding good farming practices are used to determine whether claims should be paid or the amount of the claim, there must be a delay in the payment of such claims until the process is complete. Therefore, no change has been made.

*Comment:* Many commenters stated that inclusion of the word ''arbitration'' in section 14(a)(2) (Our Duties) is inconsistent with removal of the arbitration clause proposed in section 20.

*Response:* Since FCIC will address the proposal to remove arbitration and the public comments regarding that proposal in a subsequent rule, no change is necessary.

*Comment:* A commenter believes an adverse selection issue could arise if the ''first crop'' and ''second crop'' are not insured by the same company. They stated for example, in Texas a wheat grower could buy wheat coverage by the sales closing date, then only report his so-called ''for grain'' acreage on the acreage reporting date, which would then drive whether wheat became the ''first crop.''

*Response:* In the scenario presented in the comment, the insured producer would have little indication of growing conditions for a second crop when reporting the wheat acreage in the fall. Therefore, if adverse selection does exist, it would not matter whether or not the first and second crops were insured with the same insurance provider. However, FCIC has revised the reporting requirements in section 9(a)(7) to ensure that both insurance providers know that there is a second crop. No change has been made.

*Comment:* Several comments were received regarding proposed provisions contained in sections 15(e) through (g). The comments are as follows: (1) A few commenters believed the producers rights and responsibilities for a partial loss on the first crop needed more clarification; (2) A few commenters asked, if one insurance company covers the first crop and a different company covers the second crop, who has responsibility and liability for paperwork and premiums; (3) A commenter questioned insuring only the first crop, and leaving the 2nd crop uninsured; (4) A few commenters wanted clarification regarding coverage and premium cost for second crop acreage and what happens when the second crop suffers an insurable loss; (5) A few commenters felt the 35% and 65% breakdown is confusing and one commenter did not feel the 35% is fair since most input costs could be incurred by the time the first crop is lost; (6) A few commenters were concerned with the extra work, burden and costs companies would bear to implement these rules because the rules may require adjusting the crop several times as well as making trips to help decide if the first crop is a total loss or partial loss; and (7) A few commenters felt sections 15(f) and (g) (which FCIC believes should be correctly cited as 15(e) and (f)) will increase loss adjustment expense (due to more paperwork and extra trips to the farm), and one of these stated the producer may ask for two calculations on loss adjustment and select the ''best deal.''

*Response:* Section 15 only pertains to the manner in which payments are made. FCIC has clarified sections 9 and

14 regarding the notice requirements, record keeping for any acreage subject to indemnity reduction when a second crop is planted, and timing of payments. When more than one insurance company is involved, and the insured elects to insure a second crop, it would be the responsibility of the company insuring the first crop to pay the reduced indemnity and collect the reduced premium for the first crop and to revise the indemnity and premium if there is no loss to the second crop. The proposed provisions allow a producer to elect whether or not they want insurance on second crop acreage because a full payment for a first crop can often exceed the total of a reduced indemnity payment on the first crop and a full indemnity payment on the second crop. For example, a producer who loses a cotton crop and would receive an indemnity of $1,000 but elects to plant grain sorghum on the same acreage, with a liability of $500, would only collect $350 for the cotton and even if there was a total loss to the grain sorghum, the producer would only collect $850 for the crop year, instead of $1000 they could have collected if they had not planted or insured the second crop. FCIC has clarified sections 15(e) and (f) to specify that there is no impact on the premium or indemnity for second crop acreage even when the second crop suffers a loss or a subsequent crop is planted on the same acreage. Section 108 of ARPA requires the 35 percent payment, which equates to a 65 percent reduction. Therefore, both percentages are used to determine the indemnities for the first crop when the second crop is planted and does not sustain an insurable loss. No change can be made in these percentages. FCIC agrees administration of the new rules may require some extra work when adjustments to the claim are needed because a second crop is planted. FCIC also agrees that for prevented planting acreage, an additional loss adjustment is needed when a second crop is planted. FCIC agrees that additional work is required to determine the effects of planting a second crop. However, since ARPA requires these provisions, no changes can be made.

*Comment:* A commenter suggested the provisions proposed in section 15(f) be modified to treat prevented planting claims in a similar manner as non-emergence claims. The commenter stated knowing weather related situations can change, they believe a producer who files a prevented planting claim should be able to keep 100 percent of the indemnity if the situation changes and the producer is later able to plant a second crop on the acreage that they be allowed to keep the prevented planting indemnity if they elect not to insure the second crop. They believe the so-called ''black dirt'' policy currently in place prevents growers from making good management decisions and capitalizing on what can often be rapidly changed growing conditions, even when they are willing to take the risk on themselves. The commenter recommended the proposed rules be stricken until such time as a comprehensive review of prevented planting rules can be completed and a coherent set of recommendations in this regard can be put forth.

*Response:* FCIC not accept these suggestions. Section 108 of ARPA mandates a reduction in prevented planting payments for first crops anytime a second crop is planted on the same acreage, except in the case of double-cropping. Unlike the provisions regarding a second crop planted on acreage planted to a first crop on the same acreage, which only requires the reduction when the second crop is insured and suffers and insurable loss, ARPA mandates such reduction to the prevented planting payment regardless of whether the second crop is insured. Therefore, no change can be made.

*Comment:* A commenter stated the provisions proposed in section 15(h) seem to conflict with the definition of ''cover crop.''

*Response:* The double-cropping requirements cannot be met if a cover crop is a second crop and is hayed, grazed or otherwise harvested. ARPA requires, for the purpose of proving double-cropping, that both crops be insurable. Cover crops are not insurable. Therefore, no changes can be made.

*Comment:* A commenter asked what is meant by ''insurance offered under the authority of the Act'' in section 15(h)(3). In other words, does the insurance simply have to be offered for the two crops, or do the specific crop types, practices, etc., have to be included in the actuarial table for the county.

*Response:* ''Insurance offered under the authority of the Act'' means that the policy is reinsured by FCIC. Private hail policies or other types of crop insurance policies that are not reinsured by FCIC are not offered under the authority of the Act. Further, insurance must be offered for the specific crop types, practices, etc., in order to meet double-cropping requirements. If the actuarial documents do not include the specific crop types, practices, etc., insurance is not offered under the authority of the Act, unless insurance was provided by a written agreement approved by FCIC.

*Comment:* A commenter stated that the provisions proposed in section 17(c) may present computer systems problems.

*Response:* FCIC agrees and appropriate changes will be made in data systems to accommodate situations in which premium reductions are required. No change has been made.

*Comment:* A few commenters thought the language in section 17(f)(4) is confusing, in part due to the use of like terms in different ways than they have been used in other sections. They asked whether they should interpret the language proposed to remove the requirement that the same acreage be prevented. One of the commenters suggested language be added to identify the second crop and require that records must be on the same physical location.

*Response:* FCIC incorporated the double cropping provisions from ARPA. However, for the purposes of readability, FCIC simply changed the wording to fit within the existing text. Therefore, the terms are being used in the same manner as stated in other policy provisions. Section 108 of ARPA allows a producer to rotate the acreage they double crop and does not restrict the producer from qualifying for benefits associated with double cropping on specific acreage they have not double cropped in the past. Therefore, the provisions do not require the same physical acreage to be prevented from being planted as has been double cropped in the past. No change has been made.

*Comment:* A commenter asked, regarding the provisions proposed in section 17(f)(4)(i), whether the insurance provider, FCIC or some other entity would determine whether or not a practice is an ''established practice.'' The commenter further asked whether FCIC is the determining agency, and what procedures must the insured or the insurance provider follow to obtain such a determination.

*Response:* It is the insurance providers responsibility to determine whether it is an established practice to plant the second crop for harvest following harvest of the first insured crop based upon whether such practice is generally recognized by agricultural experts or the organic agricultural industry for the area. FCIC will not be determining whether the practice is established in the area. However, there may still be issues regarding whether the practice qualifies as a good farming practice even if it is established in the area. In such cases, FCIC may be requested to make a determination. But this is only after the initial determination of whether the practice is

established has been made. To make that determination, insurance providers must consult with agricultural experts or organic agricultural industry.

*Comment:* A commenter suggested the word ''the'' be inserted after the word ''double-cropped'' and before the word ''acreage'' in section 17(f)(4)(ii).

*Response:* FCIC disagrees with the recommended change because the addition would lead a reader to believe specific acreage had to be double cropped in the past. As stated above, this is not required. Therefore, no change has been made.

*Comment:* A few comments were received regarding section 17(f)(5). The comments are as follows: (1) A few commenters believe the proposed language is unclear, and they are not sure what is intended; (2) A commenter recommended the word ''crop'' be replaced with the words ''agricultural commodity'' in the first sentence of section 17(f)(5). The commenter also asked how a company would know if another crop had been planted on the acreage; and (3) A commenter suggested deleting the comma after the words ''if any crop'' in the first sentence of section 17(f)(5). The commenter also recommended the words ''or other authorization by USDA allows haying/grazing'' (similar to opening of the Conservation Reserve Program (CRP) acreage) be inserted at the end of the paragraph.

*Response:* FCIC is not sure where the ambiguity is. The provision is intended to preclude the payment of a prevented planting payment if the acreage is planted or a volunteer crop is harvested within the time frame specified. The provision does not distinguish between who plants the crop or harvests the volunteer crop. If it occurs on the acreage, no prevented planting payment is made. FCIC disagrees that the word ''crop'' should be replaced with ''agricultural commodity'' because it would make this provision inconsistent with other related provisions in the policy. FCIC will consider the appropriateness of such a change in the future. To properly administer these provisions, insurance providers must ask the producer if another crop has been on the acreage in the same crop year. FCIC agrees the comma should be deleted after the phrase ''if any crop'' in the first sentence and has revised the provision accordingly. FCIC disagrees with the comment recommending the addition of language that would allow emergency haying or grazing. ARPA does not allow exceptions from the reductions in premium and indemnity when the crop was planted for harvest. If the provision were added, it would be impossible to determine whether or not the insured intended to plant the crop for harvest. To ease administration, there is now an assumption that if the crop was harvested, it was planted for harvest. Therefore, no change has been made.

*Comment:* A commenter believes the provisions proposed in section 17(f)(5)(ii) seem inconsistent with the provisions of section 15(g).

*Response:* FCIC agrees that a conflict exists. As proposed, section 15 indicated a prevented planting payment would be reduced when a cover crop was hayed, grazed or otherwise harvested, while section 17 indicated no prevented planting payment would be made in this case. The provisions in section 15(g)(3) have been revised to indicate the prevented planting payment for a first crop is reduced when a cover crop is hayed, grazed or otherwise harvested after the end of the late planting period, or after the final planting date if a late planting period is not applicable. Section 17(f)(5) has also been revised to indicate the prevented planting payment for a first crop cannot be made when a cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period, or on or prior to the final planting date if no late planting period is applicable. FCIC has also restructured section 17(f)(5) for clarification. Both sections 15(g)(3) and 17(f)(5) have also been revised to clarify the impact of haying or grazing a volunteer crop.

*Comment:* A commenter stated the proposed rule admittedly liberalizes the prevented planting provisions for two groups of producers, which will mean additional indemnities, costs and other outlays of money by SRA holders. The commenter stated despite admitting the Proposed Rule liberalizes the prevented planting provisions, the agency states that it will not adjust premium rates to reflect the changes in the prevented planting provisions, in fact, the agency states adjusting rates would be ''inappropriate.'' The commenter believes the agency's refusal to adjust rates to account for the liberalization of the prevented planting provisions is arbitrary and capricious, in violation of the custom, practice and course of dealings between the agency and the SRA holders, contrary to the agency's interpretation of its own duties and obligations under the SRA, the Federal Crop Insurance Act (Act) and regulations, in breach of the current and prior SRAs, in violation of the Act, and contrary to the principles espoused in the recent Supreme Court cases of *Mobil Oil Exploration & Producing Southeast, Inc.* v. *United States,* 2000 WL 807187 U.S. (June 26, 2000) and *United States* v. *Winstar Corp.,* 518 U.S. 839 (1996). The commenter stated any and all rules increasing the outlay of money by SRA holders must be appropriately rated in an actuarially sound manner. They added moreover, if adequate loss experience is unavailable to support the necessary actuarial calculations, the provisions cannot, and should not, be liberalized. The commenter hereby reserves, and specifically does not waive, any and all claims that the SRA holders they represent and their Managing General Agents may have against the agency or the FCIC arising out of the liberalization of the prevented planning rules, or any other rules or policy provisions, contemplated in the Proposed Rule.

*Response:* The commenter misinterprets the cost benefit analysis (CBA) for the proposed rule. The CBA does state prevented planting provisions are liberalized. This is because insureds now have the additional choice of planting a second crop and receiving a prevented planting payment. However, the CBA indicates changes made to the provisions may require either decreases or increases in the premium rate associated with prevented planting. The CBA specifies several scenarios could exist with the new provisions and examines each with respect to the impact on program costs. Whether or not the rate for prevented planting coverage is increased or decreased depends, in part, on the number of people who had a full prevented planting payment in the past who now will elect to receive the reduced preventing planting payment and plant a second crop. In addition, the number of people who did not receive a prevented planting payment in the past, who would now receive a reduced (35 percent) prevented planting payment must be considered. FCIC will consider all of the possible scenarios resulting in increased and decreased prevented planting payment amounts when establishing premium rates for the new provisions and will make appropriate adjustments in premium rates to ensure that they are actuarially sound.

*Comment:* Several commenters commented on the provisions proposed in section 20 that allow producers to request a reconsideration of any loss determination regarding ''good farming practices.'' The comments are as follows: (1) A commenter stated although they believe the proposed language is effective and clear, they question why there is a separate reconsideration procedure specifically for determinations regarding good farming practices; (2) A few commenters

were concerned about producers ability to resolve disputes regarding good farming practices with the proposed elimination of arbitration; (3) A commenter stated the appeal and review provisions proposed are difficult to follow and should be rewritten, if to be maintained at all, and should read as follows: ''Only the FCIC may make a determination regarding good farming practices. If you do not agree with any loss determination made by it regarding good farming practices, you may request reconsideration of its determination in accordance with the review process established for this specific purpose and published at 7 CFR part 400, subpart J.'' The commenter added there is no reason to refer to appeal of other determinations through application of the procedures specified at 7 CFR part 11, subpart A, since FCIC is not a party to the insurance policy and has no role for making determinations other than those with respect to good farming practices; (4) A few commenters stated the proposed provisions are not needed because only FCIC can render a determination of ''good farming practices;'' (5) A few commenters stated there is a fine line in many cases between whether a farmer failed to exercise ''good farming practices'' with respect to a crop or ''abandoned'' the crop. Therefore, the commenters believe ''abandonment'' cases should likewise be subject to the reconsideration process; (6) A few commenters asked if mediation might be a part of the ''informal administrative process'' to be established by the Corporation in an adverse determination of ''good farming practices.'' The commenters believe mediation provides a vital opportunity for producers to speak with FCIC decision-makers face to face. One of the commenters stated the subjective nature of determining ''good farming practices'' and getting a clear understanding from the producer of what was done and the other factors at play, makes mediation an ideal way to sort those facts out in a confidential and non-adversarial setting. One of the commenters stated FCIC should solicit public input on a review process for determinations of ''good farming practices.'' The commenter stated that while there are bare references to the review process published at 7 CFR part 400, subpart J in the proposed provisions, there is no proposal for an administrative process in the proposed rule. The commenter realizes the Corporation published a final rule on the appeal procedures under USDA's general administrative regulations, (67 FR 13249 (2002)). The commenter added the proposed rule was published in 1999, prior to enactment of the ARPA, and the prefatory comments to the final rule state that, ''After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into the final rule.'' The commenter was disappointed the Corporation has taken this approach to its rule-making responsibilities. They added while ARPA clearly states good farming practice determinations will not be considered adverse decisions for purposes of the National Appeals Division, it is silent on whether mediation might be a part of the ''informal administrative process'' to be established by the Corporation. The commenter believes, especially in the absence of clear standards under which ''good farming practices'' will be determined, mediation may be a vital opportunity for producers to speak with FCIC decision-makers face to face. They stated the review process for good farming practice determinations should require the producer be given an opportunity to review and respond to the evidence available to or considered by the person who made the original determination. The commenter suggested the Corporation include the regulatory sections in 7 CFR part 400, subpart J if it extends or re-opens the comment period on the crop insurance rules; (7) A commenter suggested the CFR sections be referenced by number not letter, for easy reference and consistency with the rest of the policy; (8) A commenter stated some of the cited regulations do not appear to exist, but rather are ''reserved'' sections. The commenter also asked if these regulations will be finalized prior to the effective date of this policy, and if it is appropriate to reference ''reserved'' sections; and (9) A commenter suggested provisions regarding appeals and administrative reviews be removed from section 20 and incorporated in a separate section 21, since they appear to deal with determinations made only by FCIC or RMA.

*Response:* Section 123 of ARPA requires FCIC to establish an informal administrative process that allows a producer the right to a review of a determination regarding good farming practices. Even if the arbitration provisions remain, they will be inapplicable to determinations of good farming practices. The only dispute resolution mechanism available is the reconsideration process to FCIC. FCIC does not agree the provisions should be revised to specify only FCIC may make good farming practice determinations. FCIC has revised the definition of ''good farming practices'' to specify insurance companies make the determination based on consultation with experts and that insurance providers, or insureds through their insurance provider, may contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.'' FCIC disagrees reference to an appeal in accordance with 7 CFR part 11 is unnecessary. FCIC still makes certain determinations, such as approval of written agreements and some yields. FCIC has established the reconsideration process for good farming practices because it is required by ARPA. FCIC does not have the resources to reconsider other insurance provider decisions, such as abandonment. In addition, since a determination of abandonment is a factual determination made by the insurance company, any dispute regarding a determination of abandonment could be resolved through arbitration. Mediation cannot be a part of the reconsideration process. The purpose of mediation is to reach a compromise. However, determinations of good farming practices involve questions of fact based on whether the farming practices are generally recognized by experts for the area. The definition of ''generally recognized'' has been added to make the definition of ''good farming practices'' more objective and states that if there is a genuine dispute between experts, the practice is not generally recognized. Therefore, either the practice is or is not a good farming practice so there is no middle ground that could be achieved through mediation.

Since the reconsideration process was already codified prior to the proposed rule and FCIC did not propose any changes to the reconsideration process, there was no ability to solicit comments in the proposed rule. Any changes in the reconsideration process made in this final rule are in response to comments received to the proposed rule. If FCIC makes any other changes to the reconsideration process, it will solicit comments. Since determinations of good farming practices are based on the opinion of designated experts, the insured should be able to obtain the opinion upon which the determination was based and respond to the opinion in the reconsideration process. The determinations of lettering or numbering in the CFR is dictated by the Office of Federal Register and FCIC has

no authority to change such references. A final rule was published in the **Federal Register** on March 22, 2002, to amend the appeal regulations found in 7 CFR part 400, subpart J, to include the administrative reviews for determinations of good farming practices. Therefore, all of the regulations referenced within the proposed rule do exist and do not reference ''reserved'' sections. FCIC is also publishing a technical correction, concurrently with this final rule, to amend the appeal procedure regulations found in 7 CFR part 400, subpart J, to clarify determinations of good farming practices made by either the Agency or private insurance companies are subject to administrative review and to make other changes required in response to comments to the proposed rule. One such change is to put all the good farming practice reconsideration requirements in one section. FCIC has clarified section 20 to specify those provisions that are applicable to decisions made by the insurance provider and those made by FCIC. FCIC has added provisions to clarify that decisions with respect to good farming practices do not include determinations of the amount of assigned production for failure to use good farming practices.

*Comment:* A commenter asked why organic is a different unit when it is just a different practice in section 34(c).

*Response:* Farming methods used in organic operations are subject to specific criteria, separate from conventional practices. For example, organic producers are prohibited from using certain substances for the control of weeds, disease or insects and fertilizers that conventional producers may use. Additionally, organic production must be kept separate from conventional production to avoid losing its organic status. Since producers maintain records of planted acreage and harvested production for crops grown under an organic practice separate from crops grown conventionally, FCIC believes separate optional units are appropriate for organic acreage.

*Comment:* One commenter stated the language in section 36 does not conform to the language of ARPA. Another commenter stated that this language will supersede major portions of the Crop Insurance Handbook and current Actual Production History procedures.

*Response:* ARPA only specifies that FCIC allow such election and what the election consists of. These provisions in the rule are consistent with ARPA. However, ARPA does not specify the manner or timing for such election. Therefore, the manner and timing needed to be included in the policy. Minor revisions will be required to the existing yield adjustment procedures (yield substitution) contained in the Crop Insurance Handbook to conform with the new language in the Basic Provisions.

*Comment:* Several commenters stated the reference in section 36(a) to ''* * * actual yields in your production history that, due to insured causes of loss, are less than 60 percent of the applicable transitional yield* * *'' indicates this applies to ANY insured cause of loss, while section 13 of the 2003 Crop Insurance Handbook specifies ''* * *caused by drought, flood, or other natural disasters.'' The commenters stated that while the end result may be the same, they believe the difference in wording may lead to different interpretations, therefore, they suggest this be clarified.

*Response:* FCIC agrees that the provisions should be the same and will amend the Crop Insurance Handbook to be consistent.

*Comment:* Several commenters commented on the ending phrase in section 36(a) which states, ''* * * you may elect to exclude one or more of any such yields''. Several of the commenters believe the language leads to confusion. They feel the word ''excludes'' suggests these low actual yields are simply dropped from the Actual Production History (APH) calculation rather than having substitute yields used in their place. The commenters stated this is subsequently explained in subsection (c), but they feel it might be preferable to eliminate any confusion in the first paragraph. They recommended combining subsections (a) and (c).

One of the commenters recommended that FCIC amend the language to read: ''you may elect to exclude any of such actual or appraised yields.''

*Response:* FCIC agrees that section 36(a) should also refer to the replacement of yields and has modified the provision accordingly. FCIC has added a definition of ''actual yields'' that includes both actual and appraised yields. Therefore, no change is made.

*Comment:* A few commenters stated that while reference to ''one or more'' of these low actual yields may be technically correct, they believe it could be misunderstood. They believe that once yield adjustment is elected, all qualifying low actual yields are eligible for substitution, but actual implementation is on a database basis (at production reporting time, depending on which of the various possible yield adjustment methods result in the best approved Actual Production History yield), not on an individual yield basis. The commenter stated for example, one database for a crop/county policy may implement substitute yields while other databases use ''cups'' or yield floors, however within that first database, substitute yields would replace ALL qualifying low actual yields, not just some.

*Response:* Section 105 of ARPA authorizes the exclusion and substitution of any actual yield that was less than 60 percent of the applicable transitional yield. The insured will now have the option of excluding and replacing any individual qualifying actual yield within a database instead of replacing all such yields within a database. The provision has been revised for clarity.

*Comment:* Several commenters stated the language in section 36(b) sounds as though once the yield substitution is elected it can never be canceled, which is contrary to procedures contained in section 13A(4) and 13B of the 2003 Crop Insurance Handbook. They recommended adding ''* * * unless canceled by the applicable cancellation date.''

*Response:* Since yield substitution election can be made on an individual actual yield basis, FCIC agrees that the insured should be able to cancel each election in the database. If an election is cancelled, the actual yield will be used in the database. For example, if the insured elected to substitute yields in its database for the 1998 and 2000 crop year, for any subsequent crop year, the insured can elect to cancel the substitution for either or both years. The proposed language was so modified and requires the election to be cancelled by the applicable cancellation date.

*Comment:* A few commenters suggested the language in section 36(c) that states, ''* * * a yield equal to 60 percent of the T-yield that is applicable in the county * * *'' could be understood as always meaning the published county ''T'' Yield from the actuarial documents. They suggested replacing the language with the following: ''* * * a yield equal to 60 percent of the applicable T-yield. * * *'' The commenters believe this revision would be consistent with current procedural references to the ''applicable ''T'' Yield'' since other Actual Production History procedures may result in other types of ''T'' Yields, sometimes on a database basis, such as the simple average ''T'' Yield for added land, weighted average ''T'' Yields for perennials, etc. They also suggested referring to ''T'' Yields rather than T-yields to be consistent with the format used throughout the Crop Insurance Handbook.

*Response:* FCIC agrees the provision should reference the applicable T-yields and has revised sections 36(a) and (c) accordingly. With respect to the reference to T-yields, the Crop Insurance Handbook will be modified to conform with the Basic Provisions.

*Comment:* A few commenters suggested the parenthetical example in section 36(c) be rewritten to make the intended point that the substitute yields may vary by year. They believe as written, the language suggests the election of substitute yields is by year (rather than by crop/county with actual implementation by database).

*Response:* Section 36(a) and (c) clearly state that the producer may elect to exclude any individual qualifying actual yield for a crop year in the database. However, appropriate changes have been made to clarify that a crop year's individual actual yield is replaced with a percentage of the corresponding crop year's applicable T-yield.

*Comment:* Several commenters commented on section 36(d). A few of the commenters stated the language indicates the yield substitution election is not reversible. They believe this is contrary to current procedure, which allows the continuous Yield Adjustment Election to be elected and canceled on a crop/county basis, and also provides for the insured to decide whether to implement yield substitution by database each year the election is in place. The commenters stated an individual database under the election may have the best approved Actual Production History yield using substitute yields one year, but then might be better with a yield floor the following year, however as written, this now-irreversible election would preempt any subsequent use of yield floors (and ''cupped'' yields, which currently are preempted only the year following a year when substitute yields were used) until all substituted yields have dropped off the database. They believe an already complicated procedure for policyholders and agents would become even more difficult as policyholders would have to try to guess the long-term advantages and disadvantages of choosing this election. They recommended this policy language be revised to reflect current Crop Insurance Handbook procedure (without too much detail). The commenters believe if this change really is intended, it may explain why sections 36(a) and (c) are written to suggest that substitute yields are elected by year instead of implemented by database. They stated if that is the case, presumably carryover policyholders who had the yield substitution election the year before these new Basic Provisions become effective would be given the opportunity to cancel that election rather than being bound by these new rules that did not apply when they made the initial decision.

*Response:* FCIC agrees the election should be reversible and has added language to 36(b) to allow the cancellation of each election, if done not later than the applicable cancellation date.

*Comment:* One commenter asked for clarification of language in section 36(e) that references ''* * * such other basis as determined appropriate by FCIC to cover increased risk * * *''

*Response:* FCIC has not previously included its rating methodology in the policy because such methodology is always subject to adjustment to ensure actuarial soundness. Therefore, FCIC has revised the provision to require that the premium adjustment reflect the risk associated with the yield adjustment as mandated by ARPA.

*Comment:* A commenter stated there must be risk management tools and policies to reflect the changing risks inherent in a different (organic vs. conventional) agro-ecological system of management. The commenter also believes many farmers do not understand the complexities of the crop insurance programs. They stated although some new risk management tools have recently become available, USDA needs to do more to help support risk management tools for organic agriculture.

*Response:* FCIC has clarified the provisions to maximum extent practicable. Further, RMA has established comprehensive risk management education and outreach opportunities by providing on-going training to producers in the use of futures, options, crop insurance, and other risk management tools through which producers can manage their own risks. New risk management tools are continuously being developed and if anyone would like to submit a new policy for organic crops, they can do so under section 508(h) of the Act.

*Comment:* A commenter stated that sustainable and organic are two very different systems, one being natural continuous regeneration (sustainable), while the other, is unnatural, managed and manmade (organic). The commenter stated they had no idea what they are meant to identify, as sustainable in an independent perspective, which is not also organic, and that this should be clarified.

*Response:* FCIC agrees sustainable and organic farming practices are two distinctly different farming methods and has defined the two terms separately. Under the final provisions, organic farming practices will be insured as a separate practice, while sustainable farming practices will be insured under current conventional farming practices. FCIC does not believe further clarification is necessary.

*Comment:* Several commenters stated they assume FCIC reviewed procedure contained in the Organic Practice Handbook to ensure no conflicts exist between that procedure and the proposed provisions.

*Response:* FCIC assumes the commenters are referencing the procedures contained in the 2001 Organic Crop Insurance Underwriting Guide. The procedures contained in the underwriting guide will be revised to be consistent with the organic provisions and definitions contained in this final rule.

*Comment:* A commenter stated any loss of production caused by failure to follow ''all'' good farming practices, including necessary pesticide applications to control insects, disease, or weeds will result in an appraisal for uninsured causes. The commenter added organic producers are not allowed by regulation to use pesticides and they have better control of all three problems than many conventional producers. The commenter stated it is a well-known fact at Land Grant Universities that crop rotation is a solution to these problems.

*Response:* FCIC has revised the definition of ''good farming practices'' to include production methods generally recognized by the organic agricultural industry or contained in the organic plan for organic practices. Therefore, failure of the organic methods that meet the definition of good farming practice would not result in the assessment of production for uninsured causes of loss.

*Comment:* A commenter urged FCIC to ensure data for organic practices is included in all actuarial tables in all counties so individual written agreements would not be necessary. Another commenter stated FCIC should make affirmative efforts to expand the actuarial tables by adding information from reputable, contemporary studies of yields and expected market prices for organic and sustainably produced crops. The commenter added under the proposal, insurance coverage will only be available for sustainable and organic crops if there is enough information specified in the actuarial table to determine the premium rate.

*Response:* Separate organic practices cannot be listed in all actuarial tables

until sufficient organic data for all crops and counties is available. RMA has contracted independent studies to determine what reputable organic data, including yields and pricing information, is available that could be used to include separate organic practices in the Special Provisions. Under the proposed provisions, sustainable farming practices will be insured under the current conventional practices. Therefore, separate data will not be required to establish a separate sustainable farming practice in the Special Provisions. The proposed rule allows organic practices to be approved by written agreement if separate organic practices are not included in the Special Provisions.

*Comment:* Several commenters provided the following comments regarding the use of written agreements to insure crops grown using organic practices: (1) A few commenters asked why organic producers have to sign a written agreement; (2) A commenter recommended provisions be added allowing organic farming coverage without the need for written agreements; (3) Some commenters objected to the organic premium surcharge which they state is based on a perception of additional risk in organic production systems. The commenters asked if FCIC can come up with a scientific basis for the organic premium surcharge. They do not believe FCIC's perception is backed by any scientific evidence and, in fact, is directly contradicted by independent research on the agronomic and economic benefits of organic production systems; (4) Several of the commenters believe the extra charge to organic farmers is discriminatory. They stated they are paying more and receiving less coverage; (5) A commenter asked why a producer can insure an organically grown crop under a Group Risk Plan (GRP) policy without a written agreement, yet a written agreement is required to insure an organically grown crop under all other policies except Adjusted Gross Revenue (AGR); (6) A commenter stated separate (100%) T-Yields used to establish APH yields for certified organic or transitional acreage will be provided on the written agreement and asked who will be setting these yields and on what information the yields will be based; and (7) A few commenters stated while the proposed rule does add the possibility of organic insurance based on actuarial information in the future, in the meantime organic producers will have to rely on written agreements in a biased and economically discriminatory process (*i.e.*, insure without any written agreements, or go without insurance). They believe the proposed rule does little to alleviate that position, despite the attempt by Congress to eliminate such discrimination.

*Response:* Written agreements are needed where there is insufficient data to include organic practices in the actuarial tables. Organic practices cannot be insured under conventional practices because higher yield variability may exist, particularly in catastrophic events. FCIC has data that suggests that there is greater yield variability. Therefore, it may be necessary to include a premium load because premium rates are greatly dependent on the variability of yields and the premium rate must be reflective of the risk involved to be actuarially sound. The premium load will be based on the data FCIC has for organic crops. If the commenters have independent data that proves otherwise, FCIC recommends they provide the data to RMA for review. FCIC does not agree that the premium charged for an organic practice is discriminatory because it is based on the risk associated with the practice as required by section 508(d) of the Act. The GRP and AGR insurance programs differ significantly from the insurance provided under the Common Crop Insurance Policy Basic Provisions. Indemnities are paid to producers insured under GRP when a county loss is triggered, regardless of whether or not the individual producer suffered a loss. The AGR program provides insurance coverage based on the producer's historical adjusted gross revenue for the farm. Since neither of these insurance products provide coverage based on individual crop losses, as crops under the Common Crop Insurance Policy Basic Provisions do, organic crop practices do not materially alter the risk or coverage provided under either AGR or GRP policies. FCIC will be setting the T-yields for all practices based on the available data for the practice. FCIC has eliminated the bias and discrimination by considering whether the specific organic practice is a good farming practice. If sufficient and credible data is available, organic practices will be added to the actual documents. The organic industry is encouraged to provide data regarding organic practices.

*Comment:* Many commenters stated the final rule should add a clear statement that organic crop insurance coverage will not include insurance premium surcharges.

*Response:* FCIC cannot make such a statement because, as previously stated, the premium must be based on the risk associated with the practice and in some cases, may result in higher premiums. Therefore, no change has been made.

*Comment:* Some commenters stated if organic farmers need to keep and submit four years of records, maybe all farmers should have to supply four years of records.

*Response:* The record keeping requirements for written agreements will be the same for all producers regardless of whether the producer uses a conventional or organic practice. Further, the record keeping requirements will be the same for producers of conventional and organic practices in counties where conventional and organic practices are provided in the actuarial documents. Therefore, organic producers are not treated any differently than any other.

*Comment:* A commenter supported expansion of the AGR program to include all states in order to ensure fair prices are paid to certified organic growers and those using sustainable agricultural practices.

*Response:* FCIC cannot expand the AGR program in this rule. FCIC will consider this request when deciding whether to expand the AGR program in the future.

*Comment:* Many commenters were concerned about how organic prices will be established. The comments are as follows: (1) Many commenters stated the final rule should add a clear statement that organic crop insurance coverage will include full recognition of organic price premiums when making indemnity payments; (2) A commenter urged FCIC to ensure data on organic premiums is included in all actuarial tables in all counties so that fair returns for losses are paid to growers. They also stated fair prices should take into consideration market premiums for a given certified organic product; (3) Some commenters asked how the actuarial organic pricing tables will be set and if the organic industry will be given the opportunity to comment on the process and sources used to set actuarial pricing information for organic commodities; (4) Some commenters stated they are restricted to conventional market prices. They understand the market values will be changed in a couple of years, however until that time, they are asked to accept the conventional prices. The commenters were concerned as to who will establish the organic prices and how they will be determined; (5) A few commenters recommended until actuarial information for organic pricing is established, organic price premiums be based upon individual crop pricing histories or in the absence of an

individual history, upon a county average or the averages of multiple counties (to reach a critical mass, if necessary). They stated this system is used for establishing a basis for yields and could be used in the interim as actuarials are being developed; and (6) A commenter recommended a system of county averages be used for producers transitioning into organic production.

*Response:* FCIC cannot provide a statement that organic practices will include a price premium because the price is determined based on the projected market price at the time of harvest and there is no guarantee that the projected price at harvest for organic crops will be significantly different. If the projected market price at harvest for an organic crop is higher, such price will be provided on the actuarial table. FCIC will set organic prices in the same manner that prices are set for all crops. FCIC does not allow an opportunity to comment on the process or the sources of data used for setting any crop price. FCIC has contracted studies to research pricing data throughout the organic industry to determine if sufficient reliable pricing information is available that could be used to establish organic prices separate from conventional prices in the future. Until sufficient price data is available, FCIC has no choice but to offer conventional prices for organic crops. FCIC does not use individual crop pricing histories to set the expected market price because it is an inaccurate measure of such price. County averages may be used in the establishment of expected market prices for organic crops if they provide an accurate measure of the projected market price at the time of harvest. Therefore, no change has been made.

*Comment:* Several commenters believe the organic premium surcharge, coupled with the lack of insurance coverage based on organic prices, creates bias against organic producers. The comments are as follows: (1) A commenter stated the organic premium factor of 1.05 is not right unless producers are paid the price premium they are receiving; (2) Several commenters stated the crop insurance program is irrelevant to organic producers because of the organic premium surcharge and the lack of organic price premium; and (3) Several commenters stated over a year ago the organic community raised two major issues, the organic premium surcharge they feel is unreasonable and which they believe is based on a perception of risk not backed by evidence, and the lack of organic price premium, both of which are still not addressed in the proposed rule. They added that although the proposed rule does add the possibility of organic insurance based on actuarial information in the future, the likelihood of organic policies based on anything but written agreements in the near term is small. They stated most producers are left with the unenviable choice of insuring under biased and economically untenable written agreements, or insuring without written agreement and facing continued bias against organic farming practices despite the attempt by Congress to eliminate such discrimination, or doing without insurance. They do not believe organic producers should be expected to agree to insurance by written agreement if they are forced to pay more than other producers and receive no benefit from their price premium on claims. One of the commenters stated they, as an organization, would continue to recommend organic producers not agree to insurance by written agreement under these conditions.

*Response:* The organic premium factor is not dependent on the price received. Premium rates are greatly dependent on yield variability. As stated above, a higher yield variability exists for organic practices than for conventional practices, particularly in catastrophic events. The 1.05 premium adjustment factor currently used for organic practice written agreements reflects the data regarding the yield variability risk for organic farming practices. FCIC is providing the maximum coverage available based on the data it has. As stated above, the premium is based on the risk determined from the data provided to FCIC. Further, FCIC cannot provide separate organic prices until adequate organic price data is obtained. FCIC has contracted studies to help obtain such price data. FCIC sympathizes with the problems faced by organic producers. However, without actuarially sufficient data, FCIC cannot make the suggested changes. FCIC is working as expeditiously as possible to collect this data and hopes to have separate prices for organic crops in the actuarial in the near future. Therefore, no change has been made.

*Comment:* A commenter stated for certified organic acreage, the provisions in section 37(c) may be a problem for crops like alfalfa, since reporting and crop insurance is different than for a grain crop. The commenter stated producers carry the insurance through the winter for winter kill. They believe provisions for alfalfa and forage crops are needed.

*Response:* FCIC fails to see why the requirement to have documentation proving the crop is grown organically when it is reported as an organic practice should be a problem for perennial crop producers. Producers of all insured crops must report their practice and provide any necessary documentation, such as contracts, by the acreage reporting date. The commenter failed to provide any information upon which FCIC could make an exception to this requirement for organic crops. No change has been made.

*Comment:* A commenter stated they had a problem with the provisions in section 37(c) requiring the use of certifying agents for transitional acreage, because many times a decision by a soil consultant is in place until the end of the season (sometimes winter) until certifying agents finally get time to review.

*Response:* To be insured as an organic practice, there must be evidence that such practice is used. Such evidence is provided by the certifying agent in the organic plan. If the transitional acreage is not included in the organic plan, it would be difficult to verify that an organic practice was used on the transitional acreage. Therefore, no change has been made.

*Comment:* Many commenters commented on the provisions proposed in section 37(g). Most of the commenters believe the crop insurance policy should provide coverage for contamination by unintentional application or drift of prohibited substances. The commenters provided the following comments and questions: (1) A commenter stated pesticide and genetic drift are among the most pervasive threats faced by sustainable and organic farmers, yet the proposed rule specifically excludes coverage for these risks for organic producers. The commenter believes crop insurance is the only reliable means to spread the risk of pesticide and genetic drift for sustainable and organic farmers, and that spreading the risk is an essential function of crop insurance. The commenter stated section 107 of ARPA requires the Corporation to offer quality loss adjustment coverage for ''identity preserved'' crops on a smaller than unit basis. The commenter stated the most relevant quality loss for many identity preserved crops would be the loss of identity due to the introduction of foreign genetic and chemical materials. The commenter asked if this coverage is currently available, and if not, when it will be made available; (2) A commenter asked what the rationale is behind excluding coverage for contamination and asked if that position is defensible in light of the purposes of the Federal crop insurance program; (3) A

commenter was concerned with the directive that organic farmers establish buffer areas to prevent contamination. The commenter has spent much time working in the area of biotechnology and is aware of the lack of scientific understanding of the mechanisms of drift and how to prevent it; (4) A commenter stated RMA should responsibly address liability issues regarding contamination of organic crops by genetically engineered crops. The commenter stated it is a new concern, with far-reaching consequences for all involved in the production, distribution, marketing and consumption of food. They asked what insurance is available to organic growers in the event of contamination of their crops and from whom it would be available; (5) A few commenters stated over a year ago, the organic community raised the issue of the need for insurance against risks of drift and GMO contamination, which are still not addressed in the proposed rule; (6) A commenter stated failure to insure against a major price risk (drift and GMO contamination) is unfortunate. The commenter understands coverage of this type of loss could be difficult in terms of premium structure and affordability; however, they believe the U.S. government needs to continue to pursue ways to protect certified organic growers from the economic risks of genetic contamination from genetically modified varieties. They believe contamination of a crop in spite of the presence of a buffer zone should be a covered loss under Federal Crop Insurance regulations; (7) A commenter believes failure to cover these perils is discriminatory and indefensible in light of the purposes of the Federal crop insurance program; (8) A few commenters stated the proposed rule specifically excludes insurance for the risks of drift and contamination, despite their growing damage to organic products. They stated this failure to insure against a major price risk is expected, though unfortunate; and (9) A commenter believes the crop insurance policy should provide this coverage for organic producers if it is the result of a natural disaster, the same as it does for conventional producers, because the producers cannot control it if it happens. The commenter added yield loss should be exempted when establishing the crop yield.

*Response:* FCIC agrees the risk of contamination by application or drift of prohibited substances is a major risk to organic producers and has significant economic implications. Unfortunately, under section 508(a) of the Act, FCIC can only insure losses due to natural causes. It does not have authority under the Act to provide crop insurance coverage for any loss of production directly caused by contamination of prohibited substances because the contamination is the cause that damages the crop and it is not a natural cause, even if the contamination is spread by a natural cause. Section 107 of ARPA states that all the conditions must be must be met for such additional quality adjustment coverage to be provided. While they may meet the condition of identity preserved, organic producers have not demonstrated that they meet all the conditions. If all conditions can be met, the quality loss adjustment will be applicable. In order to qualify for an organic practice, the producer must have an organic plan. If the buffer zone is required in the organic plan, FCIC does not have the authority to change the requirement in the plan. Therefore, concerns with the buffer zone should be directed to the certifying agency. For the reasons stated above, FCIC cannot cover contamination from genetically engineered crops. Such losses are not due to a natural cause. FCIC is unaware of any insurance coverage currently available to cover contamination from genetically engineered crops. While FCIC sympathizes with the organic producers, unless the Act is revised, FCIC is unable to provide coverage for this peril. FCIC cannot exempt yield loss caused by contamination when establishing the crop yield. The Act requires the APH yield be based on the actual production history for the crop, if the crop was produced. Therefore no change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Amended the definition of ''second crop'' to add provisions that allow a replanting of the first crop to be considered a replanted crop if replanting is required or it is specifically made optional in the policy, and the insured elects to replant and insure as the first insured crop. Policies, such as the small grains policy, state that replanting of wheat after the failure of a winter wheat crop is optional, not required. In these circumstances, FCIC does not want to require replanting because the producer paid for a separate endorsement to have the option to replant and continue insurance on a winter wheat basis, replant and insure as a separate spring wheat crop, or continue to care for the damaged winter wheat crop. If the producer elects to replant and insure the crop under the first insured crop policy, such replanting should not be considered as a second crop because the producer does not get an indemnity for the first crop. If the producer elects to replant and insures the replanted crop as a separate spring wheat crop, the replanted crop would be considered a second crop. The definition is also amended to include cover crops planted with the intention of haying, grazing or otherwise harvesting at a later time. The proposed definition included only those cover crops actually hayed, grazed or otherwise harvested. This change will require cover crops that are destroyed prior to being hayed, grazed or otherwise harvested but that are covered under FSA's noninsured crop disaster assistance program (NAP) or receive other USDA benefits associated with forage crops, to be considered a second crop; and

2. Section 15(g) is revised to clarify indemnity payments, prevented planting payments, and premium calculations in other parts of the policy do not conflict with the reductions specified in section 15. This section is also revised to remove the requirement to reduce an indemnity when a volunteer or cover crop is harvested from acreage on which a first crop was planted. Since the volunteer crop or cover crop is not insurable, it could never sustain an insurable loss, which is a prerequisite for an indemnity reduction for the first insured crop. This section is also revised to require the prevented planting payment reduction when a volunteer crop is harvested after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop.

3. Section 15(g)(3)(ii) is revised to clarify that a prevented planting payment reduction will apply if the insured cash rents to another person the acreage for which a prevented planting payment was received. This addition is made to be consistent with the current prevented planting provisions that specify that an insured is not eligible for a prevented planting payment if the insured cash rents the acreage that was prevented from being planted.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The changes that remain in this rule are statutorily mandated.

With respect to the provisions of this rule, it would be contrary to the public interest to delay its implementation.

Further, such changes regarding the inclusion of an informal reconsideration process for determinations of good farming practices and making determinations of good farming practices more objective are in the public interest. This is because these changes provide the producer with a less expensive mechanism to adjudicate disputes regarding good farming practices and benefits both producers and the insurance providers by providing more flexibility in the entities that can evaluate the farming practices used, and setting a standard that reduces the problems caused by a disagreement among experts.

Further, it is in the public interest because the changes regarding the limitation on providing multiple benefits on the same acreage in the same crop year will reduce program costs because producers will no longer be able to collect numerous indemnity payments on the same acreage in cases such as a continuing drought.

The public interest will also be served because this final rule also provides the basis for extending and clarifying coverage for crops produced under organic or sustainable farming practices. This provides producers with more meaningful coverage by eliminating the denial of coverage for failure to use the same good farming practices as used by producers under conventional practices.

In addition, the public interest is served because insurance providers will now be able to verify the cause of loss for prevented planted acreage in a timely manner and ensure that claims are properly paid. This should eliminate a significant program vulnerability and reduce program costs.

The public interest is further served by allowing producer the flexibility to determine which yields will be substituted on an annual basis because it will allow such producers to tailor their coverage to their individual risk management needs, which may change every year.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date of June 30, 2003. This would mean that the affected producers and insurance providers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

**List of Subjects in 7 CFR Parts 400, 407, and 457**

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and recordkeeping requirements.

**Conforming Amendment**

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, subpart J to read as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for 7 CFR part 400 continues to read as follows:

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

## Subpart J—Appeal Procedure

■ 2. In § 400.90, revise the definition of ''good farming practices,'' and add the definition of ''insured'';

■ 3. In § 400.91:

■ a. Revise paragraph (a)(2); and

■ b. Revise paragraph (b)(2);

■ 4. In § 400.92, remove paragraph (c);

■ 5. In § 400.93, amend paragraph (a) by removing the second and third sentences;

■ 6. In § 400.95, amend paragraph (a) by removing the words ''or determination regarding good farming practices'' from the first sentence;

■ 7. In § 400.96:

■ a. Remove the paragraph (a) designation and revise the introductory text to read as follows: ''Except as provided in § 400.98, with respect to adverse determinations:'';

■ b. Redesignate paragraphs (a)(1), (2) and (3) as paragraphs (a), (b) and (c), respectively;

■ c. Amend redesignated paragraph (c) by removing the words ''paragraphs (a) and (b) of''; and

■ d. Remove paragraph (b); and

■ 8. Add § 400.98.

The revisions read as follows:

### § 400.90 Definitions.

* * * * *

*Good farming practices.* For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

*Insured.* An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year.

* * * * *

### § 400.91 Applicability.

* * * * *

(a) * * *

(1) * * *

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (*see* § 400.98).

* * * * *

(b) * * *

(1) * * *

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and reinsured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

* * * * *

### § 400.98 Reconsideration process.

(a) This reconsideration process only applies to determinations of good farming practices under § 400.91(a)(2).

(b) There is no appeal to NAD of determinations or reconsideration decisions regarding good farming practices.

(c) Only reconsideration is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(d) If the insured seeks reconsideration, the insured must file a written request for reconsideration to the following: USDA/RMA/Deputy Administrator for Insurance Services/ Stop 0805, 1400 Independence Avenue SW., Washington, DC 20250–0801.

(1) A request for reconsideration must be filed within 30 days of receipt of written notice of the determination regarding good farming practices. A request for reconsideration will be considered to have been ''filed'' when personally delivered in writing to FCIC or when the properly addressed request, postage paid, is postmarked.

(2) Notwithstanding paragraph (d)(1) of this section, an untimely request for reconsideration may be accepted and acted upon if the insured can demonstrate a physical inability to timely file the request for reconsideration.

(3) The written request must state the basis upon which the insured relies to show that:

(i) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(ii) All material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless the reconsideration decision is found to be arbitrary or capricious.

**Final Rule**

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400, part 407 and 7 CFR part 457 effective for the 2004 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2005 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule to read as follows:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 9. The authority citation for 7 CFR part 400 continues to read as follows:

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

### Subpart T—Federal Crop Insurance Reform, Insurance Implementation

■ 10. Revise the heading of subpart T to read as set forth above.

#### § 400.650 [Amended]

■ 11. In § 400.650, remove ''limited coverage'' from the second sentence.

■ 12. In § 400.651:

■ a. Revise the definitions of ''additional coverage'' and ''approved yield'';

■ b. Remove ''limited,'' from the definition of ''administrative fee''; and

■ c. Remove the definition of ''limited coverage''.

The revisions read as follows:

#### § 400.651 Definitions.

* * * * *

*Additional coverage.* A level of coverage greater than catastrophic risk protection.

* * * * *

*Approved yield.* The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under applicable policy provisions, or other limitations according to FCIC approved procedures applied when calculating the approved yield.

* * * * *

#### § 400.652 [Amended]

■ 13. In § 400.652:

■ a. Remove ''‚limited,'' from paragraph (a);

■ b. Remove the words ''Limited and'' from paragraph (b) and capitalize the first letter in the word ''additional''; and

■ c. Remove the words ''limited and'' from paragraph (d).

#### § 400.654 [Amended]

■ 14. In § 400.654:

■ a. Remove ''‚limited'' from paragraph (a);

■ b. Remove the words ''limited or'' from paragraph (c)(6); and

■ c. Remove ''‚limited,'' from paragraph (d).

## PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2004 AND SUCCEEDING CROP YEARS

■ 15. The authority citation for 7 CFR part 407 continues to read as follows:

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

■ 16. Amend part 407 by revising the part heading as set forth above.

■ 17. Amend § 407.9, as follows:

■ a. Revise the introductory text of the section;

■ b. Amend section 1—Definitions—by adding definitions of ''agricultural experts,'' ''area,'' ''certifying agent,'' ''conventional farming practice,'' ''cover crop,'' ''double-crop,'' ''first insured crop,'' ''generally recognized,'' ''organic agricultural industry,'' ''organic farming practice,'' ''replanted crop,'' ''second crop'' and ''sustainable farming practice'' and revising the definition of ''good farming practices;''

■ c. Revise section 3(c);

■ d. Remove section 3(d);

■ e. Revise section 16; and

■ f. Add a new section 21 between the first paragraph of section 20 and the example immediately following that paragraph.

The revised and added sections read as follows:

#### § 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2004 and succeeding crop years are as follows:

* * * * *

1. Definitions.

* * * * *

*Agricultural experts.* Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

*Area.* Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

* * * * *

*Certifying agent.* A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

*Conventional farming practice.* A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

*Cover crop.* A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other reasons related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

* * * * *

*Double crop.* Producing two or more crops for harvest on the same acreage in the same crop year.

* * * * *

*First insured crop.* With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

* * * * *

*Generally recognized.* When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

*Good farming practices.* The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic

agricultural industry for the area or contained in the organic plan that is in accordance with the National Organic Program published in 7 CFR part 205. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

* * * * *

*Organic agricultural industry.* Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

*Organic farming practice.* A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

*Replanted crop.* The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

*Second crop.* With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed, grazed, or otherwise harvested, is considered a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

* * * * *

*Sustainable farming practice.* A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

3. Insured and Insurable Acreage.

* * * * *

(c) We will not insure any acreage:

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where you have failed to follow good farming practices for the insured crop;

(3) Of a second crop if you elect not to insure such acreage when there is an insurable loss for planted acreage of a first insured crop and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage in accordance with section 21. In this case:

(i) You must provide written notice to us of your election not to insure acreage of a second crop on or before the acreage reporting date for the second crop if it is insured under this GRP policy, or before planting the second crop if it is insured under any other plan of insurance and if you fail to provide such notice, the second crop acreage will be insured in accordance with policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(4) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 3(c)(4)(i)(A) or (B).

* * * * *

[FCIC Policy]

16. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may:

(a) Except as provided in section 16(b), obtain administrative review of or appeal those determinations in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11.

(b) Request a reconsideration of our determination regarding good farming practices in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against us in the United States district court.

[Reinsured Policy]

16. Determinations.

(a) If you and we fail to agree on any factual determination made by us, the disagreement will be resolved in accordance with the rules of the American Arbitration Association.

(b) Except as provided in section 16(d), you may appeal any determination made by FCIC in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11.

(c) No award determined by arbitration, appeal, administrative review or reconsideration process can exceed the amount of liability established or which should have been established under the policy.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration of this determination in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against FCIC in United States district court. You cannot sue us for determinations of good farming practices.

* * * * *

21. Indemnity and Premium Limitations.

(a) With respect to acreage where you are due a loss for your first insured crop in the crop year, except in the case of double cropping described in section 21(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium for the first insured crop that is commensurate with the amount of the indemnity paid for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 21(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 21(a)(2)(ii).

(b) The reduction in the amount of indemnity and premium specified in section 21(a), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity

paid in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted.

(3) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 21(c).

* * * * *

## PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

■ 19. Amend § 457.8, Common Crop Insurance Policy Basic Provisions, as follows:

■ a. Amend section 1 by adding definitions for ''Actual Production History (APH),'' ''actual yield,'' ''agricultural experts,'' ''area,'' ''average yield,'' ''buffer zone,'' ''certified organic acreage,'' ''certifying agent,'' ''conventional farming practice,'' ''cover crop,'' ''double-crop,'' ''first insured crop,'' ''generally recognized,'' ''organic agricultural industry,'' ''organic farming practice,'' ''organic plan,'' ''organic standards,'' ''prohibited substance,'' ''replanted crop,'' ''second crop,'' ''sustainable farming practice'' and ''transitional acreage;'' and revising the definitions of ''approved yield,'' and ''good farming practices;''

■ b. Redesignate sections 3(e) through (h) as sections 3(f) through (i), respectively and add new section 3(e);

■ c. Amend section 9(a)(5) by removing ''or'' at the end of the text;

■ d. Amend section 9(a)(6) by removing the period ''.'' at the end of the text and replacing it with a semicolon '';'';

■ e. Amend section 9(a) by adding new sections 9(a)(7) and (8);

■ f. Amend section 14 by revising (Your Duties) 14(d) and 14(d)(1), redesignating section 14(f) as 14(g) and adding section 14(f);

■ g. Amend section 14 (Our Duties) by revising sections 14(a), and 14(a)(1) and (2);

■ h. Amend section 15 by revising the section heading, redesignating section 15(e) as section 15(j), and adding new sections 15(e) through (i);

■ i. Amend the first sentence of section 17(c) to add the words ''except as specified in section 15(f)'' after the word ''acreage'' and before the period at the end of the sentence;

■ j. Amend section 17(e)(1) by removing ''or (5)'' at the end of the first sentence;

■ k. Amend the first sentence of section 17(e)(1)(i)(A) by replacing the words ''substitute crop other than an approved cover'' with ''second'' and adding ''unless you meet the double cropping requirements in section 17(f)(4)'' before the closing parentheses;

■ l. Revise sections 17(f)(4) and (5);

■ m. Remove current section 17(f)(6) and redesignate sections 17(f)(7) through (12) as 17(f)(6) through (11) respectively;

■ n. Revise section 20. Appeals (For FCIC policies);

■ o. Revise section 20. Arbitration (For reinsured policies);

■ p. Amend section 34(c)(1) by removing ''and'' at the end of the text;

■ q. Amend section 34(c)(2) by replacing the period at the end of the text with ''; and'';

■ r. Amend section 34(c) by adding section 34(c)(3);

■ s. Revise section 36; and

■ t. Add a new section 37.

The revised and added sections read as follows:

### § 457.8 The application and policy.

* * * * *

**Terms and Conditions**

*Basic Provisions*

1. Definitions.

* * * * *

*Actual Production History (APH).* A process used to determine production guarantees in accordance with 7 CFR part 400, subpart (G).

*Actual yield.* The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres.

* * * * *

*Agricultural experts.* Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

* * * * *

*Approved yield.* The actual production history (APH) yield, calculated and approved by the verifier, used to determine the production guarantee by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, which will always contain at least four yields. The database may contain up to 10 consecutive crop years of actual or assigned yields. The approved yield may have yield adjustments elected under section 36, revisions according to section 3(d) or (e), or other limitations according to FCIC approved procedures applied when calculating the approved yield.

* * * * *

*Area.* Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage.

* * * * *

*Average yield.* The yield, calculated by summing the yearly actual, assigned, adjusted or unadjusted transitional yields and dividing the sum by the number of yields contained in the database, prior to any adjustments, including those elected under section 36, revisions according to section 3(d) or (e), or other limitations according to FCIC approved procedures.

* * * * *

*Buffer zone.* A parcel of land, as designated in your organic plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices, and used to minimize the possibility of unintended contact by prohibited substances or organisms.

* * * * *

*Certified organic acreage.* Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

*Certifying agent.* A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

* * * * *

*Conventional farming practice.* A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop that may be, but is not required to be, generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

*Cover crop.* A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil

improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

* * * * *

*Double crop.* Producing two or more crops for harvest on the same acreage in the same crop year.

* * * * *

*First insured crop.* With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

* * * * *

*Generally recognized.* When agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.

*Good farming practices.* The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are: (1) For conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

* * * * *

*Organic agricultural industry.* Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

*Organic farming practice.* A system of plant production practices approved by a certifying agent in accordance with 7 CFR part 205.

*Organic plan.* A written plan, in accordance with the National Organic Program published in 7 CFR part 205, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

*Organic standards.* Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205.

* * * * *

*Prohibited substance.* Any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional or buffer zone acreage. Lists of such substances are contained at 7 CFR part 205.

*Replanted crop.* The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

* * * * *

*Second crop.* With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed, grazed, or otherwise harvested, is considered a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured. Notwithstanding the references to haying and grazing as harvesting in these Basic Provisions, for the purpose of determining the end of the insurance period, harvest of the crop will be as defined in the applicable Crop Provisions.

* * * * *

*Sustainable farming practice.* A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

* * * * *

*Transitional acreage.* Acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

* * * * *

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

(e) Unless you meet the double cropping requirements contained in section 17(f)(4), if you elect to plant a second crop on acreage where the first insured crop was prevented from being planted, you will receive a yield equal to 60 percent of the approved yield for the first insured crop to calculate your average yield for subsequent crop years (not applicable to crops if the APH is not the basis for the insurance guarantee). If the unit contains both prevented planting and planted acreage of the same crop, the yield for the unit will be determined by:

(1) Multiplying the number of insured prevented planting acres by 60 percent of the approved yield for the first insured crop;

(2) Adding the totals from section 3(e)(1) to the amount of appraised or harvested production for all of the insured planted acreage; and

(3) Dividing the total in section 3(e)(2) by the total number of acres in the unit.

* * * * *

9. Insurable Acreage.

(a) * * *

* * * * *

(7) Of a second crop if you elect not to insure such acreage when there is an insurable loss for planted acreage of a first insured crop and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage in accordance with section 15. In this case:

(i) You must provide written notice to us of your election not to insure acreage of a second crop at the time the first insured crop acreage is released by us or, if the first insured crop is insured under the Group Risk Protection Plan of Insurance (7 CFR part 407), before the second crop is planted, and if you fail to provide such notice, the second crop acreage will be insured in accordance with policy provisions and you must repay any overpaid indemnity for the first insured crop;

(ii) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(iii) You must report the crop acreage that will not be insured on the applicable acreage report; or

(8) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(i) You must provide records acceptable to us that show:

(A) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(B) The applicable acreage has had three or more crops produced and harvested on it in at least two of the last four years in which the insured crop was grown on it; and

(ii) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 9(a)(8)(i)(A) or (B).

* * * * *

14. Duties in the Event of Damage or Loss.

Your Duties—

* * * * *

(d) You must:

(1) Provide a complete harvesting and marketing record of each insured crop by

unit including separate records showing the same information for production from any acreage not insured. In addition, if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e)(2) (for example, you planted a second crop on acreage where a first insured crop had an insurable loss and you do not qualify for the double cropping exemption), you must provide separate records of production from such acreage for all insured crops planted on the acreage. For example, if you have an insurable loss on 10 acres of wheat and subsequently plant cotton on the same 10 acres, you must provide records of the wheat and cotton production on the 10 acres separate from any other wheat and cotton production that may be planted in the same unit. If you fail to provide such separate records, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage or, if you fail to provide the records necessary to allow allocation, the reduction specified in section 15 will apply; and

* * * * *

(f) In the event you are prevented from planting an insured crop which has prevented planting coverage, you must notify us within 72 hours after:

(1) The final planting date, if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable; or

(2) You determine you will not be able to plant the insured crop within any applicable late planting period.

* * * * *

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after the later of:

(1) We reach agreement with you;

(2) Completion of arbitration, reconsideration of determinations regarding good farming practices or any other appeal that results in an award in your favor, unless we exercise our right to appeal such decision; or

* * * * *

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(e) With respect to acreage where you have suffered an insurable loss to planted acreage of your first insured crop in the crop year, except in the case of double cropping described in section 15(h):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium for the first insured crop that is commensurate with the amount of the indemnity paid for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 15(e)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 15(e)(2)(ii).

(f) With respect to acreage where you were prevented from planting the first insured crop in the crop year, except in the case of double cropping described in section 15(h):

(1) If a second crop is not planted on the same acreage for harvest in the same crop year, you may collect a prevented planting payment that is equal to 100 percent of the prevented planting payment for the acreage for the first insured crop; or

(2) If a second crop is planted on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Provided the second crop is not planted on or before the final planting date or during the late planting period (as applicable) for the first insured crop, you may collect a prevented planting payment that is 35 percent of the prevented planting payment for the first insured crop; and

(ii) Be responsible for a premium for the first insured crop that is commensurate with the amount of the prevented planting payment paid for the first insured crop.

(g) The reduction in the amount of indemnity or prevented planting payment and premium specified in sections 15(e) and 15(f), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity or prevented planting payment made in accordance with the Crop Provisions, and any applicable endorsement.

(2) Even if another person plants the second crop on any acreage where the first insured crop was planted or was prevented from being planted, as applicable.

(3) For prevented planting only:

(i) If a volunteer crop or cover crop is hayed, grazed or otherwise harvested from the same acreage, after the late planting period (or after the final planting date if a late planting period is not applicable) for the first insured crop in the same crop year; or

(ii) If you receive cash rent for any acreage on which you were prevented from planting.

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped;

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it; and

(5) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop.

(i) The receipt of a full indemnity or prevented planting payment on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 15(h).

* * * * *

17. Prevented Planting.

* * * * *

(f) * * *

(1) * * *

(2) * * *

(3) * * *

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year, excluding share arrangements, unless:

(i) It is a practice that is generally recognized by agricultural experts or the organic agricultural industry in the area to plant the second crop for harvest following harvest of the first insured crop, and additional coverage insurance offered under the authority of the Act is available in the county for both crops in the same crop year;

(ii) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it; and

(iii) The amount of acreage you are double cropping in the current crop year does not exceed the number of acres for which you provide the records required in section 17(f)(4)(ii);

(5) On which the insured crop is prevented from being planted, if:

(i) Any crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable, unless you meet the double cropping requirements in section 17(f)(4), or unless the crop planted was a cover crop; or

(ii) Any volunteer or cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period or on or prior to

the final planting date if no late planting period is applicable;

* * * * *

[For FCIC Policies]

20. Appeals and Administrative Review.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may:

(a) Except as provided in section 20(b), obtain an administrative review of or appeal those determinations in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11. Disputes regarding the amount of assigned production for uninsured causes for your failure to use good farming practices must be resolved under this subsection.

(b) Request a reconsideration of our determination regarding good farming practices in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against us in the United States district court.

[For Reinsured Policies]

20. Arbitration, Appeals, and Administrative Review.

(a) If you and we fail to agree on any factual determination made by us, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Disputes regarding the amount of assigned production for uninsured causes for your failure to use good farming practices must be resolved under this subsection.

(b) Except as provided in section 20(d), you may appeal any determination made by FCIC in accordance with appeal provisions published at 7 CFR part 400, subpart J or 7 CFR part 11.

(c) No award determined by arbitration, appeal, administrative review or reconsideration process can exceed the amount of liability established or which should have been established under the policy.

(d) If you do not agree with any determination made by us or FCIC regarding whether you have used a good farming practice, you may request reconsideration of this determination in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J. However, you must complete the reconsideration process before filing suit against FCIC in the United States district court. You cannot sue us for determinations of good farming practices.

* * * * *

34. Unit Division.

* * * * *

(c) * * *

(3) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, or irrigated and non-irrigated acreage, separate optional units may be established for acreage of the insured crop grown and insured under an organic farming practice. Certified organic, transitional and buffer zone acreages do not individually qualify as separate units. (See section 37 for additional provisions regarding acreage insured under an organic farming practice).

* * * * *

36. Substitution of Yields.

(a) When you have actual yields in your production history database that, due to an insurable cause of loss, are less than 60 percent of the applicable transitional yield (T-yield) you may elect, on an individual actual yield basis, to exclude and replace one or more of any such yields within each database.

(b) Each election made in section 36(a) must be made on or before the sales closing date for the insured crop and each such election will remain in effect for succeeding years unless cancelled by the applicable cancellation date for the succeeding crop year. If you cancel an election, the actual yield will be used in the database. For example, if you elected to substitute yields in your database for the 1998 and 2000 crop year, for any subsequent crop year, you can elect to cancel the substitution for either or both years.

(c) Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the crop year in which the yield is being replaced (For example, if you elect to exclude a 2001 crop year actual yield, the T-yield in effect for the 2001 crop year in the county will be used. If you also elect to exclude a 2002 crop year actual yield, the T-yield in effect for the 2002 crop year in the county will be used). The replacement yields will be used in the same manner as actual yields for the purpose of calculating the approved yield.

(d) Once you have elected to exclude an actual yield from the database, the replacement yield will remain in effect until such time as that crop year is no longer included in the database unless this election is cancelled in accordance with section 36(b).

(e) Although your approved yield will be used to determine your amount of premium owed, the premium rate will be increased to cover the additional risk associated with the substitution of higher yields.

* * * * *

37. Organic Farming Practices.

(a) In accordance with section 8(b)(2), insurance will not be provided for any crop grown using an organic farming practice, unless the information needed to determine a premium rate for an organic farming practice is specified on the actuarial table, or insurance is allowed by a written agreement.

(b) If insurance is provided for an organic farming practice as specified in section 37(a), only the following acreage will be insured under such practice:

(1) Certified organic acreage;

(2) Transitional acreage being converted to certified organic acreage in accordance with an organic plan; and

(3) Buffer zone acreage.

(c) On the date you report your acreage, you must have:

(1) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement);

(2) For transitional acreage, a certificate as described in section 37(c)(1), or written documentation from a certifying agent indicating an organic plan is in effect for the acreage; and

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

(d) If you claim a loss on any acreage insured under an organic farming practice, you must provide us with copies of the records required in section 37(c).

(e) If any acreage qualifies as certified organic or transitional acreage on the date you report such acreage, and such certification is subsequently revoked by the certifying agent, or the certifying agent no longer considers the acreage as transitional acreage for the remainder of the crop year, that acreage will remain insured under the reported practice for which it qualified at the time the acreage was reported. Any loss due to failure to comply with organic standards will be considered an uninsured cause of loss.

(f) Contamination by application or drift of prohibited substances onto land on which crops are grown using organic farming practices will not be an insured peril on any certified organic, transitional or buffer zone acreage.

(g) In addition to the provisions contained in section 17(f), prevented planting coverage will not be provided for any acreage based on an organic farming practice in excess of the number of acres that will be grown under an organic farming practice and shown as such in the records required in section 37(c).

(h) In lieu of the provisions contained in section 17(f)(1) that specify prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same practice that is planted in the field, prevented planting acreage will be considered as organic practice acreage if it is identified as certified organic, transitional, or buffer zone acreage in the organic plan.

Signed in Washington, DC, on June 17, 2003.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 930

**[Docket No. FV03–930–2 FR]**

## Tart Cherries Grown in the States of Michigan, *et al.*; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.