

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