

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