

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"