

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