

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