

established has been made. To make that determination, insurance providers must consult with agricultural experts or organic agricultural industry.

*Comment:* A commenter suggested the word “the” be inserted after the word “double-cropped” and before the word “acreage” in section 17(f)(4)(ii).

*Response:* FCIC disagrees with the recommended change because the addition would lead a reader to believe specific acreage had to be double cropped in the past. As stated above, this is not required. Therefore, no change has been made.

*Comment:* A few comments were received regarding section 17(f)(5). The comments are as follows: (1) A few commenters believe the proposed language is unclear, and they are not sure what is intended; (2) A commenter recommended the word “crop” be replaced with the words “agricultural commodity” in the first sentence of section 17(f)(5). The commenter also asked how a company would know if another crop had been planted on the acreage; and (3) A commenter suggested deleting the comma after the words “if any crop” in the first sentence of section 17(f)(5). The commenter also recommended the words “or other authorization by USDA allows haying/ grazing” (similar to opening of the Conservation Reserve Program (CRP) acreage) be inserted at the end of the paragraph.

*Response:* FCIC is not sure where the ambiguity is. The provision is intended to preclude the payment of a prevented planting payment if the acreage is planted or a volunteer crop is harvested within the time frame specified. The provision does not distinguish between who plants the crop or harvests the volunteer crop. If it occurs on the acreage, no prevented planting payment is made. FCIC disagrees that the word “crop” should be replaced with “agricultural commodity” because it would make this provision inconsistent with other related provisions in the policy. FCIC will consider the appropriateness of such a change in the future. To properly administer these provisions, insurance providers must ask the producer if another crop has been on the acreage in the same crop year. FCIC agrees the comma should be deleted after the phrase “if any crop” in the first sentence and has revised the provision accordingly. FCIC disagrees with the comment recommending the addition of language that would allow emergency haying or grazing. ARPA does not allow exceptions from the reductions in premium and indemnity when the crop was planted for harvest. If the provision were added, it would be

impossible to determine whether or not the insured intended to plant the crop for harvest. To ease administration, there is now an assumption that if the crop was harvested, it was planted for harvest. Therefore, no change has been made.

*Comment:* A commenter believes the provisions proposed in section 17(f)(5)(ii) seem inconsistent with the provisions of section 15(g).

*Response:* FCIC agrees that a conflict exists. As proposed, section 15 indicated a prevented planting payment would be reduced when a cover crop was hayed, grazed or otherwise harvested, while section 17 indicated no prevented planting payment would be made in this case. The provisions in section 15(g)(3) have been revised to indicate the prevented planting payment for a first crop is reduced when a cover crop is hayed, grazed or otherwise harvested after the end of the late planting period, or after the final planting date if a late planting period is not applicable. Section 17(f)(5) has also been revised to indicate the prevented planting payment for a first crop cannot be made when a cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period, or on or prior to the final planting date if no late planting period is applicable. FCIC has also restructured section 17(f)(5) for clarification. Both sections 15(g)(3) and 17(f)(5) have also been revised to clarify the impact of haying or grazing a volunteer crop.

*Comment:* A commenter stated the proposed rule admittedly liberalizes the prevented planting provisions for two groups of producers, which will mean additional indemnities, costs and other outlays of money by SRA holders. The commenter stated despite admitting the Proposed Rule liberalizes the prevented planting provisions, the agency states that it will not adjust premium rates to reflect the changes in the prevented planting provisions, in fact, the agency states adjusting rates would be “inappropriate.” The commenter believes the agency’s refusal to adjust rates to account for the liberalization of the prevented planting provisions is arbitrary and capricious, in violation of the custom, practice and course of dealings between the agency and the SRA holders, contrary to the agency’s interpretation of its own duties and obligations under the SRA, the Federal Crop Insurance Act (Act) and regulations, in breach of the current and prior SRAs, in violation of the Act, and contrary to the principles espoused in the recent Supreme Court cases of *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 2000 WL 807187

U.S. (June 26, 2000) and *United States v. Winstar Corp.*, 518 U.S. 839 (1996). The commenter stated any and all rules increasing the outlay of money by SRA holders must be appropriately rated in an actuarially sound manner. They added moreover, if adequate loss experience is unavailable to support the necessary actuarial calculations, the provisions cannot, and should not, be liberalized. The commenter hereby reserves, and specifically does not waive, any and all claims that the SRA holders they represent and their Managing General Agents may have against the agency or the FCIC arising out of the liberalization of the prevented planting rules, or any other rules or policy provisions, contemplated in the Proposed Rule.

*Response:* The commenter misinterprets the cost benefit analysis (CBA) for the proposed rule. The CBA does state prevented planting provisions are liberalized. This is because insureds now have the additional choice of planting a second crop and receiving a prevented planting payment. However, the CBA indicates changes made to the provisions may require either decreases or increases in the premium rate associated with prevented planting. The CBA specifies several scenarios could exist with the new provisions and examines each with respect to the impact on program costs. Whether or not the rate for prevented planting coverage is increased or decreased depends, in part, on the number of people who had a full prevented planting payment in the past who now will elect to receive the reduced preventing planting payment and plant a second crop. In addition, the number of people who did not receive a prevented planting payment in the past, who would now receive a reduced (35 percent) prevented planting payment must be considered. FCIC will consider all of the possible scenarios resulting in increased and decreased prevented planting payment amounts when establishing premium rates for the new provisions and will make appropriate adjustments in premium rates to ensure that they are actuarially sound.

*Comment:* Several commenters commented on the provisions proposed in section 20 that allow producers to request a reconsideration of any loss determination regarding “good farming practices.” The comments are as follows: (1) A commenter stated although they believe the proposed language is effective and clear, they question why there is a separate reconsideration procedure specifically for determinations regarding good farming practices; (2) A few commenters