

were concerned about producers ability to resolve disputes regarding good farming practices with the proposed elimination of arbitration; (3) A commenter stated the appeal and review provisions proposed are difficult to follow and should be rewritten, if to be maintained at all, and should read as follows: "Only the FCIC may make a determination regarding good farming practices. If you do not agree with any loss determination made by it regarding good farming practices, you may request reconsideration of its determination in accordance with the review process established for this specific purpose and published at 7 CFR part 400, subpart J." The commenter added there is no reason to refer to appeal of other determinations through application of the procedures specified at 7 CFR part 11, subpart A, since FCIC is not a party to the insurance policy and has no role for making determinations other than those with respect to good farming practices; (4) A few commenters stated the proposed provisions are not needed because only FCIC can render a determination of "good farming practices;" (5) A few commenters stated there is a fine line in many cases between whether a farmer failed to exercise "good farming practices" with respect to a crop or "abandoned" the crop. Therefore, the commenters believe "abandonment" cases should likewise be subject to the reconsideration process; (6) A few commenters asked if mediation might be a part of the "informal administrative process" to be established by the Corporation in an adverse determination of "good farming practices." The commenters believe mediation provides a vital opportunity for producers to speak with FCIC decision-makers face to face. One of the commenters stated the subjective nature of determining "good farming practices" and getting a clear understanding from the producer of what was done and the other factors at play, makes mediation an ideal way to sort those facts out in a confidential and non-adversarial setting. One of the commenters stated FCIC should solicit public input on a review process for determinations of "good farming practices." The commenter stated that while there are bare references to the review process published at 7 CFR part 400, subpart J in the proposed provisions, there is no proposal for an administrative process in the proposed rule. The commenter realizes the Corporation published a final rule on the appeal procedures under USDA's general administrative regulations, (67 FR 13249 (2002)). The commenter added the proposed rule

was published in 1999, prior to enactment of the ARPA, and the prefatory comments to the final rule state that, "After the proposed rule was published and the comments received, Congress enacted ARPA, which created specific limitations on the appeals of determinations of good farming practices made by FCIC. Since these limitations are statutorily mandated, they are incorporated into the final rule." The commenter was disappointed the Corporation has taken this approach to its rule-making responsibilities. They added while ARPA clearly states good farming practice determinations will not be considered adverse decisions for purposes of the National Appeals Division, it is silent on whether mediation might be a part of the "informal administrative process" to be established by the Corporation. The commenter believes, especially in the absence of clear standards under which "good farming practices" will be determined, mediation may be a vital opportunity for producers to speak with FCIC decision-makers face to face. They stated the review process for good farming practice determinations should require the producer be given an opportunity to review and respond to the evidence available to or considered by the person who made the original determination. The commenter suggested the Corporation include the regulatory sections in 7 CFR part 400, subpart J if it extends or re-opens the comment period on the crop insurance rules; (7) A commenter suggested the CFR sections be referenced by number not letter, for easy reference and consistency with the rest of the policy; (8) A commenter stated some of the cited regulations do not appear to exist, but rather are "reserved" sections. The commenter also asked if these regulations will be finalized prior to the effective date of this policy, and if it is appropriate to reference "reserved" sections; and (9) A commenter suggested provisions regarding appeals and administrative reviews be removed from section 20 and incorporated in a separate section 21, since they appear to deal with determinations made only by FCIC or RMA.

*Response:* Section 123 of ARPA requires FCIC to establish an informal administrative process that allows a producer the right to a review of a determination regarding good farming practices. Even if the arbitration provisions remain, they will be inapplicable to determinations of good farming practices. The only dispute resolution mechanism available is the reconsideration process to FCIC. FCIC

does not agree the provisions should be revised to specify only FCIC may make good farming practice determinations. FCIC has revised the definition of "good farming practices" to specify insurance companies make the determination based on consultation with experts and that insurance providers, or insureds through their insurance provider, may contact FCIC to determine whether or not production methods will be considered to be "good farming practices." FCIC disagrees reference to an appeal in accordance with 7 CFR part 11 is unnecessary. FCIC still makes certain determinations, such as approval of written agreements and some yields. FCIC has established the reconsideration process for good farming practices because it is required by ARPA. FCIC does not have the resources to reconsider other insurance provider decisions, such as abandonment. In addition, since a determination of abandonment is a factual determination made by the insurance company, any dispute regarding a determination of abandonment could be resolved through arbitration. Mediation cannot be a part of the reconsideration process. The purpose of mediation is to reach a compromise. However, determinations of good farming practices involve questions of fact based on whether the farming practices are generally recognized by experts for the area. The definition of "generally recognized" has been added to make the definition of "good farming practices" more objective and states that if there is a genuine dispute between experts, the practice is not generally recognized. Therefore, either the practice is or is not a good farming practice so there is no middle ground that could be achieved through mediation.

Since the reconsideration process was already codified prior to the proposed rule and FCIC did not propose any changes to the reconsideration process, there was no ability to solicit comments in the proposed rule. Any changes in the reconsideration process made in this final rule are in response to comments received to the proposed rule. If FCIC makes any other changes to the reconsideration process, it will solicit comments. Since determinations of good farming practices are based on the opinion of designated experts, the insured should be able to obtain the opinion upon which the determination was based and respond to the opinion in the reconsideration process. The determinations of lettering or numbering in the CFR is dictated by the Office of Federal Register and FCIC has